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1625

And. Tiraquelli Commentarij de nobilitate & jure Primogeniorum.

A TREATISE

Discovering the

RIGHTS

AND

PRIVILEDGES

OF THE

Elder and *Younger*

BRETHREN.

With the power of Parents, to Dispose of their Estates to their Children or others.

Collected out of the *Common*, *Canon*, *Civil*, and *Statute* Laws of *England*.

By *John Page*, late Master in Chancery, and Dr. of the Civil Law.

London, Printed and are to be sold by *Matthew Smelt*, at the Corner Shop of Exchange Alley, next *Cornhill*, 1665.

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London, Printed and are to be sold by *Matthew Smith* at the Gorge, Shop of Exchange Alley, next Cornhill, 1674.

Jus Fratrum,

THE

Law of Brethren.

Touching the power of Parents, to diſpoſe of their Eſtates to their Children, or to others.

The *Prerogative* of the *Eldeſt*, and the Rights and Priviledge[s] younger *Br*[others]

Shewing the vari[ous] in ſeveral Coun[tries] on of Familie[s] Common, C[ivil] Laws of *En*[gland]

By *John Page*, Dr

Printed by at the three end o[f]

To the Reader:

DIſcordia fratrum inter ſe Amariſſima, *wofull and long continued experience tells us with what bitterneſs enmity amongſt brethren is carried on, if we caſt the leaſt glance of our eye amongſt the many violent Law-ſuits, daily proſecuted by brother againſt brother; ſo that we ſee the ſaying of the Poet, complaining of the Iron age, near two thouſand years ago, verified in the ſuperlative degree in our age,*

Concordia fratrum
Rara eſt ---------
Filius ante diem patris inquirit in annos.

Love amongſt brethren (ſaith he) is rare to be found, and the ſon goes to the O-

racle to enquire how long his father ſhall live, that he may inherit his eſtate.

The eldeſt would have all to be his, and the younger thinks the elder hath too much; and while they ſtrive who gets moſt uſe of his fathers eſtate, commonly a third perſon carries all from them both.

This Treatiſe will diſcover the Rights *of both Elder and Younger, if they will be contented with their portion, fully anſwering the* Apologer, *for the younger brother, or the younger brothers* Plea. *This book called the* Apology *or* Plea *for the younger brother (being a* Treatiſe *ſo intituled) was* Printed *at* Oxford *in the year* 1636.

Hereby brethren may learn to know their Right, and that being known and obtained, I could wiſh them to be therewith content, and obſerve the Apoſtles divine *command,* Let brotherly love continue.

The fathers power and Prerogative in disposing his estate.

A Fathers free power disputed, as that he may dispose of his Lands, or other his Fortunes; to his son, sons, or any of them, as right, reason, the Laws of God and man, the civil, cannon, and municipal Laws of this kingdome do command.

2, I will prove by the Laws of God and man, that a fathers freedome is such that he may lawfully and religiously, give his lands, or goods, or other his fortunes, to any of his children, for the preservation of his name, and comfort of his posterity: as right, reason, or the better deserts of a son, shall perswade him.

3. Nature never ſet it down, as a Law, that the eſtate ſhould be left to the elder brother or younger, or to any one in particular, or to all, but to whom the father (being true and free Lord thereof) ſhould beſt deviſe by will, guided by reaſon.

4. Neither is there in Scripture, nor in any other written Law under heaven, any command, to reſtrain the fathers power, but rather the contrary: for ſuch is the Law of Nature, that they who are *ex æquo*, one mans children, ſhould, if not *ex æquo*, yet not *ex iniquo*, be provided for.

5. Children during their fathers lives, have only *jus ad rem*, not *jus in re*, to a fathers goods, whereupon the Law calleth them, *quaſi bonorum patris dominos*, which their right only takes effect after their fathers death, for during life, he hath power to alter, alien, ſell, and give, as it ſhall pleaſe him.

6. The

6. The Cannon, and civil Laws, give no precedency or ſuperiority of right to eldeſt ſons, but command it as a thing in equity, the father, either to divide his inheritance amongſt his ſons, or to give to one more then to another, as it ſhall pleaſe him; yet, with this *proviſo*, that he who hath the leaſt hath his childs part, except on juſt cauſe he diſinherit him.

7. The Common Laws of our Realm, allow every father to give his land in fee, either by deed in his life, or will at his death, to any of his children, yea, to a ſtranger, without rendring a reaſon why he doth ſo.

8. The Imperial or Civil Laws, gave Parents at the firſt a power of life and death over their children; and the Jews had the ſame power given them by the divine Laws.

An advertiſement to the Reader.

You may ſee here, with what a mercileſs immanity, this wild Apologer falls upon elder Brothers; for no Laws, either divine or humane, allow them (as he ſayes) any right of inheritance at all above other ſons, nor any other ſons can claim any thing of their Parents (as of right) but what is their Parents pleaſure to beſtow of them: and daughters are in the ſame, or in a worſe taking, for he infers, that they may lawfully be diſinherited, and the eſtate conferred by the father (if he hath no ſons) to any one of the ſame name, becauſe the name of the family is extinct in the daughter, and the Hebrew word Zacar, *which ſignifies a male child, doth ſignifie alſo a memoriall, becauſe the fathers memory is preſerved, in the ſon, But this is not all, for it is not enought that Parents have a free power to make their children beggers, unleſs*

unless they have also a free power over their childrens lives. It is strange that the Apologer, who pretends so much learning and honesty, should be so fair in his Epistle, and so fowl in his Treatise, (which thanks be to God) is no Gospel, for there he protests. that it was not upon any the least presumption of a self sufficiency, to confront thereby any received custome; nor to diminish the natural reverence due by younger brothers to their elder, nor to enkindle emulation in families, nor to innovate any thing to the prejudice of publick or private quiet, that he made publick his Treatise; but his principal motive or aim was, the singular respect, which (as a Patriot) he bears to the glory of Gentlemens houses, and to the general good of great Brittain; *which, how well he hath performed, or whether he had any such intention or no, let any man judge who shall read his Treatise: And though he seems in some places, a little to confine the parental power, by saying, that Fathers are to dispose of their estates, as right reason, and the better deserts of a son shall perswade them, or chiefly for the preservation of their families, (which every wise, and good man, must and will have a care of) yet this is but a seeming restriction, for all is left to the fa-*

thers

thers affection and will; and the eldeſt ſon hath no more right to inherit then the youngeſt, and either of them none at all, but at the courteſie of the Parental Monarch.

As for his vain ſuppoſitions, that if the eldeſt ſon be a natural fool, or madman, or turns Turk, or be extreamly and deſperately vitious; they ſhall have no ſerious part of my Anſwer, becauſe they are no material parts of the charge of his Treatiſe. The queſtions, upon which I ſhall chiefly ground my Anſwer, are theſe two:

The firſt is, Whether eldeſt ſons have a ſuperiour right, above other ſons, to inherit the greateſt part of the fathers eſtate.

The ſecond is, Whether fathers may lawfully, and religiouſly give their lands and goods, to which of their children they pleaſe, or to whom they will: But, I will now take a view of his proofs, and be ſo bold as to examine his invincible reaſons, and arguments, for ſo he calls them.

The younger brothers Prerogative.

Proof 1. *Out of the Law of Nature for the younger brother.*

THat all communicable things were common amongſt men, for many ages after the Creation: in all which time, no man laid proper claim to any thing, as due to himſelf alone, whereby it well appears, that hereditary ſucceſſion, or title to a fathers lands, or goods, could not be then in uſe, or ſo much as thought of.

Anſwer. It ir more then the Apologer, or any man can prove, that all things were enjoyed in common, for ſo many ages as he ſurmiſes. But the contrary is manifeſt; for we find, that immediately after the Creation, and for many ages together, the generations of *Seth* and *Cain*, did neither communicate, nor ſo much as marry the one with the other; and it is not unprobable to think, that *Cain* and *Abel*, (the firſt Sons of our firſt Parents) as they had ſeveral

ſeveral vocations, ſo they had (as a curſe for ſin) a ſeveral propriety in their goods, becauſe they agreed no better.

But admit all things were enjoyed in common, for many ages after the Creation, what is this to purpoſe; for if there were no proprieties or eſtates, there could be no inheritance then in uſe; though (queſtionleſs) the right of inheritance was then in eldeſt ſons, as now it is: unto whom (as the Apologer ſayes) there is a natural reverence due from his younger brothers; and if there be a natural reverence due, there ought alſo to be a natural right to inherit the greateſt part of the fathers eſtate, for how elſe ſhould that natural reverence be maintained, with ſuch a due reſpect as it ought to be.

Proof 2. That all ſorts of people, as well Chriſtians as others, who have perfection in natural ſociety, or a perfect and religious life, in a natural or worldly converſation of men, have, and do daily imbrace, this natural and bleſſed community.

Anſw. This bleſſedneſs of community, which the Apologer ſo much contemplates, takes away his pretended free power of Parents, for if there were no eſtates, they would

would have nothing to diſpoſe. And it is the Anabaptiſts and Familiſts ſo much admire, and prophanely practice, for they enjoy all things in common, even as much as their wives, and in that are more beaſts then many of the unreaſonable creatures: for amongſt many of them there is a kind of conjugal contract, and a conſtancy obſerved between the males and females. It is true, that all good Chriſtians ſhould ſo live, and love, and help one another, as though they enjoy'd all things in common: But I would fain know, what other people beſides Chriſtians, the Apologer means, who have, and do, (as he ſayes) daily imbrace this bleſſed community, and in the way of a perfect and religious life.

Proof 3. That the Law of God is never contrary to the Law of Nature, and that fathers have, by the Law of Nature, a free power to diſpoſe of their eſtates and children.

Anſw. It is true, that there is no Law of God, againſt the Law of undepraved Nature, or as Nature was in her firſt purity; yet (as our nature now is) there are many things in the Law of God, which are ſeemingly againſt Nature, or meerly preterna-

tural

tural, as is the loving of our enemies, the doing of good to them that hate and hurt us, *Matth.* 5. *Luke* 6. 1 *Pet.* 2: But as there is no Law of God, contrary to the Law of Nature; so there can be no good or warrantable Law of Nature, which doth not agree with all the divine admonitions, and precepts, both of the Old and New Testament; and therefore the pretended free power of Parents, cannot be grounded upon the Law of Nature, for it is directly against the divine precepts, as appears, *Numb.* 27. *Deut.* 21.

Proof 4. That the happy Law of Nature, which indured so many ages, and without doubt had longer continued, had not sin, which breaks all union, and depraves all natural perfection, gotten such dominion in the minds of men, that in natural equity all things could not longer be used in common: for as some men, being possest with an insatiate desire to get rule, and raign, sought the oppression of others, by taking from them that freedom which Nature had given them; so others given to sensuality, and idleness, sought to live of other mens labours, whereas by Natures Law, every one ought to live by his proper industry,

induſtry, within the rules of juſtice and honeſty; whereupon Natural reaſon perſwaded, that all things being divided, every man ſhould know his own, otherwiſe no peace or concord could be maintained in humane ſociety.

Anſw. The Apologer is ſo tranſported, with the imagination of the happineſs of community, that he flutters up and down, and even, loſes himſelf in impertinent diſcourſes, to what he undertook to treat on. But admit ſin were the cauſe of dividing lands, and making laws, he will not ſay (I hope) though he ſeems to infer it, that it is a ſin to obſerve the laws, becauſe ſin was a cauſe of making laws.

Proof 5. That Nature never ſet it down as a law, that the eſtate ſhould be left to the elder brother, or younger, or to any one in particular, or to all; but to whom, the father (being true and free Lord thereof) ſhould beſt deviſe by will, guided by reaſon.

Anſw. Neither the Apologer, nor any man whoſoever, can prove (or ſo much as make it probable) that Parents have that free and abſolute power, by the Law of Nature, as is pretended; neither can they prove

prove that the right of inheritance, in eldeſt ſons, is not grounded upon the Law of Nature: But if the Apologer would have fathers to have that free power, by the Law of Nature, as is pretended, he muſt firſt prove how fathers are become the true and abſolute Lords, and maſters of their eſtates by the Laws of Nature: for it is abſurd to ſay, that Nature gives a power to diſpoſe of that which ſhe her ſelf gives not, and this is more, I believe, then the Apologer, or any man elſe can prove.

It is true, that every man hath his ſeveral way of underſtanding, which is unto him his natural reaſon, though the thing conceived be never ſo abſurd and fooliſh. The Apologer ſayes, that fathers have ſuch a free power by the Law of Nature, and that eldeſt ſons have no right of inheritance by the Law of Nature: and this is the dictamen of his nature, or his natural reaſon, for which he gives no reaſon, nor can alledge any convincing or ſatisfying authority to prove it.

And that you may ſee, how unnatural, and unreaſonable, his pretended free power of Parents is, I pray you conſider a little, & tell me whether any thing can be more unprobable,

robable, then that a father ſhould be more
ee, and abſolute then *Adam* was, when
was in Paradiſe, and in the ſtate of In-
ocency: for *Adam*, was under a command
Law, but the Apologer would make fa-
ers lawleſs, *Stat pro ratione voluntas.*

And what I pray you can be more rea-
nable and neceſſary, then that there
ould be a chief ſon, or heir, amongſt our
ildren: for there muſt neceſſarily be an
der and ſubordination in all things, other-
ſe there will be a confuſion in all things,
d what follows confuſion, may eaſily be
nceived in any underſtanding, for it is in-
ed the mark of hell, or rather hell it ſelf,
here no good order, but an everlaſting
rrour doth inhabitate, *Job.* 10.

And it is no leſs neceſſary, for the preſer-
tion of peace and concord, amongſt Bre-
ren, that this chief ſon or heir ſhould
generally known, by a native, natural,
d undoubted right; for otherwiſe,
the other ſons would malign, and
vy that ſon, who ſhould be preferred
the inheritance, unleſs the ſon ſo prefer-
d, had an undoubted and native right
ereunto, and had his right alſo confirm-
(as is now in the caſe of eldeſt ſons) by

prove that the right of inheritance, in eldeſt ſons, is not grounded upon the Law of Nature: But if the Apologer would have fathers to have that free power, by the Law of Nature, as is pretended, he muſt firſt prove how fathers are become the true and abſolute Lords, and maſters of their eſtates by the Laws of Nature: for it is abſurd to ſay, that Nature gives a power to diſpoſe of that which ſhe her ſelf gives not, and this is more, I believe, then the Apologer, or any man elſe can prove.

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probable, then that a father ſhould be more free, and abſolute then *Adam* was, when he was in Paradiſe, and in the ſtate of Innocency: for *Adam*, was under a command or Law, but the Apologer would make fathers lawleſs, *Stat pro ratione voluntas.*

And what I pray you can be more reaſonable and neceſſary, then that there ſhould be a chief ſon, or heir, amongſt our children: for there muſt neceſſarily be an order and ſubordination in all things, otherwiſe there will be a confuſion in all things, and what follows confuſion, may eaſily be conceived in any underſtanding, for it is indeed the mark of hell, or rather hell it ſelf, where no good order, but an everlaſting horrour doth inhabitate, *Job.* 10.

And it is no leſs neceſſary, for the preſervation of peace and concord, amongſt Brethren, that this chief ſon or heir ſhould be generally known, by a native, natural, and undoubted right; for otherwiſe, all the other ſons would malign, and envy that ſon, who ſhould be preferred to the inheritance, unleſs the ſon ſo preferred, had an undoubted and native right thereunto, and had his right alſo confirmed (as is now in the caſe of eldeſt ſons) by

the generall practiſe of all good Parents, which general conſent and practice, can proceed from no other cauſe or ground then from the inſtinct of nature, and conſequently, from the will, providence, and ordinance of Almighty God.

Proof out of the Common Law and Civil Law, for the younger brothers right.

THat divine precepts are not ſo abſolutely binding, but that they may in ſome caſes lawfully be broken; for though the commandement is, *Thou ſhalt not ſteal*, nor, *Thou ſhalt not kill*; yet one may, in extream want of food, ſteal, or violently take from another man, and may lawfully kill any man in defence of his own life, and goods: ſo though there were a divine precept (as there is none) that eldeſt ſons ſhould inherit, it could not intend that ſuch eldeſt ſons, who are natural fools, or madmen, ſhould inherit.

Anſw. It is true, that natural fools and madmen (though eldeſt ſons) do not deſerve to inherit: but what doth this make againſt the rights of eldeſt ſons, who are no fools or madmen. Surely it concerns the

the pretended free power of Parents, as much as the disinheritance of eldeſt ſons: for if the father, (according to the Apologer) turn idiot, or madman, the Apologer will not deny, but that he is made thereby incapable of the management and diſpoſure of his eſtate.

Proof 7. That if the effect of elderſhip, were ſuch by the Law of God, as ſome paſſionately defend; that is, that the whole inheritance ſhould of right pertain to the eldeſt ſon, then it followeth by good conſequence, that there ſhould, nor ever could have been, but one temporal Lord of all the world, for of neceſſity Adams inheritance ſhould have gone ſtill to the next in blood.

Anſw. It is abſurd, and no conſequence at all, that there ſhould be any ſuch temporal Lord, for the eldeſt ſon is not to inherit all the eſtate, but only the greateſt part of it, fathers being to provide for all their children; and the Apologer knows, though Adam had the whole world to himſelf before he had his wife and children (who were partners with him by a coequal right) though he had a kind of ſuperiority and ſoveraignty over them) yet he had it not by way of inheritance.

Proof 8. That it was never yet averred by any ſound divine Philoſopher, or Lawyer, that nature makes immediately heirs, but men: They talk idlely who ſay, that God and nature make heirs, upon which ground our Common Lawyers ſay, that no heirs are born, but men and Law make them.

Anſw. It is more then the Apologer, or any man can prove, that eldeſt ſons are not born heirs: eldeſt ſons, as ſoon as born, are heirs apparent by the laws: King *James* was born a King, and crowned in his cradle, and is there a native and natural right in Kings, and not in others: howſoever it cannot be denied, but that *Eſau* had a native, and therefore a natural right, as appears by the word *Birthright*: and the Apologer cannot but know, that it is God only, who gives and makes heirs, which heirs are the eldeſt ſons, as plainly appears by his divine precepts, *Deuternom.* 21. &c.

Proof 9. That God, requiring obedience of children to Parents, promiſed a reward, ſaying, *Honour thy father and mother, that thy dayes may be long in the land, which the Lord ſhall give thee*; which ſurely was not ſpoken to one, but to all the ſons of men

for

for with God there is no exception of perſons, but as a juſt and pious father, he gives to every one according to his deſerts, *terram autem dedit filiis hominum*.

Anſw. I know not what the Apologer ſhould intend hereby, unleſs he would have it thought, that as all children are equally commanded to honour their Parents, ſo all children who equally honour their Parents, ſhould be equally rewarded by their Parents, though the Laws, both divine, and humane, give a ſuperiour right of inheritance to eldeſt ſons: and concerning his *terram dedit*, I know what he ſhould mean thereby, unleſs he would have every man to be thought an unnatural tyrant, and an uſurper. who hath a particular and proper eſtate unto himſelf, becauſe the words are *terram dedit filiis hominum*, God gave the whole earth to the ſons of men: that is, not to any one in particular, but to all in general. You may ſee here, how bold he is with the Laws, for he ſtrikes at the very root of them; and you may ſee what a boundleſs and liberal mind he hath, for he would have every man a freeholder, and no leſs then the whole world his inheritance; But Mr. Apologer, if this ſhould be ſo,

what would become of your pretended free power of Parents, for they would have nothing to diſpoſe of.

Proof 10. That there is no divine precept, that eldeſt ſons ſhould inherit, that it is well known to all Divines, that holy Writ hath not preſcribed any direct form to the children of God, whereby they are bound in conſcience to diſpoſe of their lands and goods, but hath abſolutely left them to the cuſtomes of their countrey, where any act of that kind ſhall be executed; that there is neither in Scripture, nor in any other written Law under Heaven, any command to reſtrain the fathers power, but rather the contrary.

Anſw. The Apologer cannot but know, that there are diverſe plain, and divine precepts, concerniug the inheritance of eldeſt ſons, one of which he himſelf doth often cite, but never fully relate, and theſe are the divine words: if a man have two wives, one beloved, and the other hated; and they have born him children, both the beloved and hated, and if the firſt born be hers that was hated, then ſhall it be, when he maketh his ſons to inherit that which he hath, that he may not make the ſon of the beloved

beloved the first-born, and prefer him before the son of the hated, which is indeed the first born, but he shall acknowledge the son of the hated, the first born, by giving him a double portion of all that he hath; for *he is the beginning of his strength, the right hand of the first-born is his*, Deut. 21. Parents therefore are not to think themselves so absolute, as that they may make choice of what heir they will, according as the wind of their affection shall blow; for affection is here excluded, we live under a Law grounded upon Divine Ordinances, which we are bound in conscience to observe, and inviolably keep: and though the letter of the law is, that eldest sons should have a double portion above their younger brothers; it is no where said, that eldest sons should have but a double portion, as though Parents should be concluded from giving them more: for so we should condemn our national Laws, and the general practise of all good Parents, who usually leave the greatest part of their estates to their eldest sons.

But sayes the Apologer (or seems to infer it) neither this, nor any other divine precept, doth any way restrain a fathers

free power: for the words are, when he maketh, or is to make, his ſons inherit: that is, when he is diſpoſed, or minded ſo to do; and if he be not ſo minded, he may chuſe, for he hath a lawful power and freedome to do otherwiſe. But Mr. Apologer, ſhall I in anſwer propoſe a qneſtion to you, and concerning your own profeſſion, (for they ſay you are a learned Divine) ſuppoſe there were this ſaying in Scripture, that when a miniſter makes, or is to make his prayers or a Sermon, he is to demean himſelf in a zealous and ſober manner; will you ſay that a miniſter, is not oblig'd at all, but may chuſe whether he will pray or preach, or demean himſelf ſoberly; indeed, I could wiſh (being your ſelf, as you ſay, a younger brother,) that you would demean your ſelf a little more ſoberly, and mannerly, towards elder Brothers, who are your maſters; and not to queſtion their ever yet undeniable rights, but rather to conform your ſelf to the admonition of the Apoſtle, *Tit.* 3. *Stultas autem quæſtiones & Genealogias, & pugnas legis deuita, ſunt enim inutiles & vanæ.*

Preof 11. That the prodigal ſon mentioned in the Goſpel, *Luke* 15. being weary of

of his fathers houſe, came to his father and boldly ſaid, *pater da mihi portionem ſubſtantiæ meæ, quæ me contingit*; this child, of which the Goſpel ſpeaks was the younger brother, yet you ſee how boldly he ſaid, *Give me that portion of goods, which belongs to me*: by which words it is evident, that a devſion or partition of a fathers goods was then in uſe; and that any child, as well younger as elder, had power by law to demand his Legitimate, or childs part, according to the nature of thd Civil and Cannon Laws; for the words following in the ſacred Text are theſe, *& diviſit ſubſtantiam illis*; and he divided unto them his living. Thus we ſee that the priviledge of elderſhip was then excluded, which now in our countrey, by cuſtome only, is gotten to be of ſuch force.

Anſw. The parable of the Prodigal, ſo much advanced by the Apologer, makes nothing againſt the rights of eldeſt ſons, for though the words are, *& pater diviſit*, and the father divided; yet it was movable goods, or money, and not lands which he divided; and it cannot be underſtood that the father gave half the eſtate to the younger ſon; for then he ſhould leave but

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one half for himſelf, his wife, and eldeſt ſon.

But this parable clearly overthrows the pretended free power of Parents; for the prodigall demanded his portion of his father, as of right, (which the Apologer ſayes, all children may do) and had it paid him.

Proof 12. That it is invincibly proved out of the book of *Job*, who was contemporary with *Moſes*, by atteſtation of judicious Theologians, that there was in thoſe times, and countreys, no ſuch Law, or cuſtome, that the eldeſt ſon ſhould play at ſweepſtake, and all the reſt left to the mercy of the four winds, for it is expreſly recorded in the laſt chapter and fourteenth verſe, that *Job* gave his daughters inheritance among their brethren, which comes home to the point in queſtion, and irrepliably evinces a fathers power and right to make partition of his eſtate among his children.

Anſw. The Apologer ſayes, he is now home to the point in queſtion; but I know not what can be further off from the matter in queſtion; if he be no better an archer, then an arguer, the ſafeſt place for a man

man to ſtand in when he ſhoots, would be at the mark, as *Diogenes* was ſaid to do to, one who uſed to rove at randome; for the queſtion he is here come home to, is, that *Iob* gave ſome inheritance to all his ſons and daughters; and he did well, and as all good Parents ought to do: for neither the Levitical law, nor any other good law, doth allow fathers to leave their whole eſtates to their eldeſt ſons, but only the greateſt part of it, for they are with *Iob*, to provide for all their children: this, I grant, is a queſtion without queſtion, but Mr. Apologer, if it pleaſe you to remember the main queſtion, which appears in the mighty charge of your Treatiſe, is, whether eldeſt ſons have a ſuperiour right to inherit above other ſons, or rather have any right at all; and whether fathers may lawfully and religiouſly, give their lands, and goods, to which of their children they pleaſe, or to whom they will.

The younger Brothers rights, by the Cannon and Civil Law.

Proofs out of the Cannon and Civil Law.

THat God in his commandements, did but second his former Ordinances given by nature; for so long as mankind lived, in a sort, after the innocency, which Gods grace in his first creation had wrought in him: God gave him no other Law, but when as by sin, those sparks which remained, after his fall, were quite extinguished, God gave him new Laws, yet agreeable to nature; and Laws, which ever had but the name and credit of Law, do derive their Original from the Law of Nature, whereupon *Cicero*, many hundred years since, said, that the ground of all Law-making, is to be taken from the chief Law, which was made before any Law was written, or City builded.

Answ.

Answ. The Apologer, to gain the more credit, doth slyly cover himself with the Law of Nature; and would perswade his easie Readers, that all the Laws, he alledges, are grounded upon that Law. I deny not, but that the same was in the Law of Nature, as is delivered in the holy Tables of the Law; but neither the Apologer, nor any man can know, which were all the Laws of Nature, nor what Laws are grounded upon that primary Law; it is the duty of every good Christian, and good subject, to conform himself to the Laws he lives under; and not to wretch and stretch them to wicked ends, by their false constructions, nor yet too curiously to search into them, which is alwayes an argument of a proud and rebellious spirit: So, that in all this fair flourish, the Apologer hath proved nothing to purpose, but only shewed the antiquity of *Cicero*, who lived (he sayes) many hundred years ago.

Proof 14. That by the Civil Law, Parents had at first, a power of life and death given them over their children: and a free disposition of all their fortunes to any of them in his life, but if he died intestate, then the estate was to be divided among the chil-

children equally, as well ſons as daughters.

Anſw. I might here anſwer him with his own two ſayings, *Ceſſante ratione, ceſſat lex, & ſummū jus, eſt ſumma injuria*; and he alſo ſayes, that it is no Law, but tyranny, which wholly diſagrees with the Law of Nature, & what can be more againſt Nature and natural equity, then that Parents ſhould have a power to deſtroy their own fleſh and blood, which are their children: and he ſayes, that theſe Laws were firſt invented and practis'd by the Romanes when they were heathens, and he needs no other anſwer then this: that it was very heatheniſhly done of them; but why ſhould the Apologer urge this, himſelf ſaying, that this Law was rigorous, and afterwards altered upon good grounds. And concerning the diviſion of the eſtate equally amongſt the children, for ſo, ſayes he, the Civil Laws ordain; It is well known, that the practiſe is much otherwiſe where the Civil Laws are in moſt force; as in *Spain, France, Germany, Italy, &c.* for there the chief houſe, and the greateſt part of the inheritance is uſually conferred upon the eldeſt ſon, and it is a Maxime amongſt them, *Seniores, honores, juniores*

juniores labores; the Arts, Arms, Amunities, and the more noble trades, as Merchandize, and the like, and not lands of inheritance are the more proper portions for younger brothers.

Proof 15. That in natural justice, children, during their fathees lives, have *jus ad rem*, not *jus in re*, to their fathers goods: Whereupon the Law calleth them *quasi bonorum patris dominos*, which their right only takes effect after their fathers death; for during life, he hath power to alter, alien, sell, and give, as it shall please him, according to form of Law, but being dead without will or disposition thereof, they fall upon his children according to the Law of Nations; that the Cannon and Civil Laws command it, as a thing in equity, the father either to divide his inheritance amongst his children, or allow his children according to his affection, by giving to one more then unto another, as it shall please him.

Answ. The Apologer speeks generally, and cites neither authourity nor Authour, and so deserues to be neither credited nor answered; but I will not deal so unkindly with him. There is no question, but that children have not only *jus ad rem*, but *jus in re*,

re, to their fathers goods in his life time, as plainly appears, by the claim which *Esau* made, and by the parable of the prodigal; for the prodigal came to his father, and boldly said, *Pater da mihi portionem, substantiæ meæ*--- give me that portion of goods which belongs to me; *& pater divisit*, and the father gave him his portion: and *Esau* came as boldly to his father, and demanded the due of his Birthright, because he was the eldest son.

And for all the large soveraignty, which (as the Apologer sayes) the Civil Laws give Parents over their children, the Apologer confesseth, that fathers (unless they can give a just cause to the contrary) are bound by the Civil Laws, to leave every child a portion, called a Legitimate, or Patrimony, which makes clearly against his so absolute a power of Parents, for if they are bound, how can they be said to be free?

Proof 16. That even to this present day, the engrossing all by primogeniture, hath not been so much as heard of, or at least-wise never admitted in the Civil Law, as by many Text in the same Law, it well appears.

Answ. The Apologer is ſtill upon his generalities, and gives neither reaſons nor authority, but the beſt is we may believe him as we liſt; I confeſs that no good Law, either Civil or Cannon, or any other Law whatſoever, allows the engroſſing all by Primogeniture; as that the eldeſt ſon ſhould have all the eſtate, & the other children nothing; but it is falſe that there is no mention at all in the Civil Law of the rights of Primogeniture: for the great Lawyer *Baldus*, in his Book *De juſtitia, & jure*, ſaith, *ſemper fuit, & ſemper erit*, it alwayes hath been, and alwayes ſhall be, that the firſt-born doth ſucceed and inherit.

And the ancient Hiſtorian *Herodotus*, in his *Polihim*, thus ſaith, it is the general cuſtome amongſt all men, that the firſt born doth ſucceed and inherit. And if we will believe Sir *John Heywood*, a late, and learned Doctour of the ſame Laws; he tells us, that all the beſt, and moſt approved interpreters of the Civil, and Cannon Laws, do jointly hold, that Parents have no lawful power to invert, or pervert, the due courſe of inheritance, unleſs there be ſome ſuch great cauſe, as was in the caſe of *Ruben*, and the word *Senior* (ſay they) which

ſignifies priority of birth, is often times taken for Lord; and not without cauſe, for ſayes on Apoſtle 1 Timoth. 5. *Seniorem ne increpaveris, ſed obſecra ut patrem;* Do not diſreſpect thy elder, but honour him and treat with him, as if he were thy father; and indeed the *Senior,* or eldeſt of our ſons (as is manifeſt, *Gen.* 27. 49 *Gal.* 4. *&c.*) is to be as a Lord over the reſt of his brethren.

But the Apologer it may be (being himſelf a Divine cannot relliſh any other authority, but from Divines; I will therefore, for his better inſtruction, and ſatisfaction (if it can be) preſent him with the opinions of two very authentique Divines, and of great antiquity S. *Chryſoſtome*, and S. *Jerom.* S. *Chryſoſtome*, in his fift Sermon againſt *Iulian*, ſaith, that the firſt-born is is to be eſteemed more honourable then the other children; and S. *Jerom*, in his Epiſtle to *Onogron*, and upon the 49. *Gen.* ſaith, that the right of inheritance is only due to the firſt begotten, or eldeſt ſon living.

Proof out of the Common Law.

THat our Common Laws give power to a father, and free will to diſpoſe of his own, as far as reaſon ſhall guide his will, without all obligation to his heir; all Lawyers agree, that ſuch Parents who have eſtates in Fee ſimple, may alien, ſell, and give, by power of our Law, their lands to whom they will, without reſpect of perſon, or Elderſhip: for it is lawful for every man to diſpoſe his own, as far as the Law ſhall permit him.

Anſw. You ſee here how the Apologer layes down the Law againſt elder brothers, and indeed againſt all children; for fathers may (as he ſayes) do what they will with their own, for ſo the Laws permit. I might here anſwer him with his own two ſayings; that Laws without reaſon are no Laws at all, and that extream Law is extream injury; but he ſhall have a fair anſwer, and I hope, a full one.

It is well known, that it is impoſſible for any Law (though there were a thouſand *Solons* to compoſe it, and the wiſdome of a

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Solomon to assist them) that could prevent all inconveniencies, and those are the best Laws politick, that prevent most. And I am so far from thinking the Laws to be faulty herein, that I must ever approve the goodness and wisdome of them, in allowing Parents so absolute a soveraignty over their estates and children: for it is most necessary and just, that Parents should have this free power permitted them, because it is a great means to keep their sons in a due obedience, and make them strive, by a noble emulation, who should best deserve their fathers love.

And the Apologer knows that usury is permitted by the Laws, and usury (as himself sayes) is as grievous a sin in the eye of Heaven, as theft is; and he may as soon prove, that usury or theft is lawful, as he can prove, that an eldest son, who is wise and dutiful, may lawfully and religiously be disinherited: for he cannot deny, but that the intention, justice, and equity of the Law is, that eldest sons should inherit; so, that upon the matter, fathers are but Feoffees in trust of their estates and children, and this great power is only lent them to prevent inconveniences:

Proof 18. That the Common Laws are of moſt force, to ſway the point in queſtion, which I have therefore purpoſely reſerved to treat on in the laſt place. That by the Common Laws, a man may give his lands in Fee, either by deed in his life, or will at his death, to any of his ſons; yea, to a ſtranger, without rendring a reaſon why he doth ſo: That it is no offence to part an inheritance amongſt children, or to disinherit an eldeſt ſon, upon juſt and evident cauſe of incapacity, if it be done according to courſe of Law.

Anſw. If the Apologer ſuppoſes by his juſt and evident cauſe of incapacity, that the eldeſt ſon be a natural fool, or madman, we will not much diſpute the matter; but if he means, as he every where pretends, that the want of the fathers affection and will, is a juſt and evident cauſe of incapacity, he is in a groſs and ſhameful errour; and I cannot but marvel, why the Apologer ſhould ſo much urge the authority and force of our Laws, on the behalf of his younger Brothers: for there is nothing ſo ſacred in our Laws, as are the rights and priviledges of Primogeniture or elderſhip: old *Bracton*, and divers others of our great-

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eſt Lawyers, do plainly aver, and prove, that our Laws are herein divinely grounded, and they give their Text, *Numb.* 27. *A perpetual Law, as the Lord commanded Moſes.*

And though the eldeſt ſon ſhould be a natural fool, or madman; yet if the father do not otherwiſe diſpoſe of the eſtate in his life time (and it may be a queſtion whether he may lawfully and religiouſly ſo do, for it would be a wrong to all the ſucceeding poſterity) yet this natural fool or madman, and his eldeſt ſon after him, or the next in blood who ſhould ſucced him, is by the power and ordinance of our Laws to inherit.

And ſuch is the indulgence of our Laws, towards eldeſt ſons and their rights, that the Law takes even natural fools, and madmen, (if eldeſt ſons) into its boſome and protection; and the eſtates are preſerved that they may run in the right courſe of inheritance, which is, to the next in blood, or from one eldeſt ſon unto another. And ſurely Mr. Apologer, I know not why you ſhould be much commended for your integrity, in perſwading Parents, that all is well done which is done by the power and per-

miſſion of the Laws; if you had aimed (as you ſay in your Epiſtle) at the general good of great Brittain, you would have told Parents, what they might lawfully do, and not what they could do; but ſuppoſe there were ſo abſolute a power in Parents as you would have them believe, what would your younger brothers get thereby, for whom you apologize: why forſooth, nothing at all, but what pleaſes the Parental Monarch, for fathers may give their lands, and goods, to a ſtranger, or to whom they will, with rendring a reaſon why they do ſo; I would fain know, whether any thing can be more inhumane and monſtrous, and whether there was ever ſuch a deſperate *John* an oaks as this wild man: for though he would a little hide himſelf under the words of a juſt and evident cauſe of incapacity; yet he confidently avers, or ſeems to infer it, that it is a ſufficient warrant for any mans conſcience to do, as the Laws ſhall enable him; *currat lex, valeat quantum valere poteſt.*

Proof 29. That though the uſe and cuſtome be, that eldeſt ſons inherit; yet the breach of this cuſtome is no ſin, for it is ſuch a cuſtome, which rather invites then com-

commands or binds; that cuſtomes againſt Law are void by the Civil Law, and that it was never yet heard that cuſtome was of ſuch force, that it ſhould be deem'd a ſin, not to follow a cuſtome, eſpecially when the Law is more pious and natural then the cuſtome is.

Anſw. It is true, that no good Chriſtian ought to obſerve any bad cuſtome, and no cuſtome is to be kept, which is againſt the Laws; if the Law be more pious and natural then the cuſtome is; but that it is againſt Law and Chriſtian piety for eldeſt ſons, who are wiſe and honeſt, to inherit the greateſt part of their fathers eſtates, or that a father may lawfully, and religiouſly, diſinherit ſuch a ſon; I cannot think him a wiſe or honeſt man who can believe it.

And whereas the Apologer ſayes, that it is but by way of cuſtome that eldeſt ſons inherit; he cannot but know, that next to the Divine commands) there is not any thing can more bind the conſcience, or more ſatisfie and ſettle the judgement, then a general practiſe or cuſtome, if the cuſtome be good and juſt, as it is in this caſe of inheritance.

And

And he knows alſo, that our Laws are divided into three parts, Statute Law, Common Law, and Cuſtome Law: and Cuſtome is a ſecond Nature: the Apologer ſayes, that it is the more general practiſe, or cuſtome, for eldeſt ſons to inherit; and how can we better repoſe our conſciences and judgements, then in a general practiſe, or cuſtome; and how can any man think otherwiſe, but that Parents do thus, and have done thus, even from all antiquity, moved only by right reaſon, and out of conſcience, in obedience to to the Laws.

Proof. Of the Law of Nature.

THat many younger brothers and ſiſters, for want of due means from their fathers and elder brothers, are forced to ſhift, which, as theſe times ſhape, is either to live lewdly, or miſerable. That the trade of Merchandize, the Military profeſſion, the Courtiers life, the ſervice of Noble men, and the like; have advanced more in former times then now they do: and this kind of life, is not ſo grateful to our Engliſh Gentlemens natures,

tures, as anciently it hath been: *Ergo*, fathers are to allow, and leave more largely to their younger children.

Anſw. The Apologer having uſed the Laws at his pleaſure, begins to tax the times: for, ſayes he, younger brothers for want of means, are forced to live, either lewdly, or miſerable, as the times ſhape. He next falls upon the Camp, Court, and City; for, ſayes he, neither Merchandize, Souldiery, nor ſervice of the King, will ſerve now adayes to prefer, and help younger brothers; and he gives this reaſon, and very wiſely, becauſe ſuch courſes of life are not ſo grateful to our Engliſh Gentlemens natures, as anciently they have been; and younger brothers, being careleſs to encreaſe their ſmall Patrimonies, by thrift, and honeſt induſtry, do by his own reaſons deſerve no Patrimony at all: for (ſayes he) *intereſt Reipublicæ, ut quilibet re ſua bene utatur*, it concerns the Commonwealth, that men be good husbands, and imploy their goods in ſuch a manner as ſhall make moſt for the good of the Commonwealth.

Yet I deny not, but that it is a great errour in Parents who have great eſtates, to leave

leave ſo little as they uſually do to younger ſons: for ſuch younger ſons, who have ſmall Amunities, and have never been inured to labour, nor have any other means to get their living by, when their neceſſities make them ſay with the Steward, in *Matth. I cannot dig, and I am aſhamed to beg*: it doth often force them to diſhoneſt courſes, and is a cauſe of numberleſſe miſchiefs; and no marvel, for it is a hell to the minds of moſt men to decline to more inferiour courſes, then thoſe have been bred up with: and therefore it were much better that Parents themſelves would have a better reſpect to their younger children, and not leave them (as too many do) to the courteſie of their eldeſt ſon, whom they endeavour to advance, by making the reſt of their children beggers; or by leaving them ſo little, that they are not able to maintain the place and credit of their Birth. I heartily wiſh it were otherwiſe, and that Parents would be better adviſed: But Mr. Apologer, you are clean beſide the matter in queſtion, for you undertook to prove a fathers free power, in diſpoſing of the eſtate at his pleaſure, and that eldeſt ſons, have no ſuperiour right to inherit above other ſons.

Proof

Proof 21. That the cuſtome of eldeſt ſons to inherit, hath rather been the overthrow, then the preſervation of Families: for, when ſuch cuſtome was not in uſe, we find in *Livy*, that three hundred of the Fabii, all of one name and Family, iſſued out of *Rome* gates, at one time, on their own coſt, for the defence of their City, who were all ſlain: In *Scotland* alſo, three hundred of the name and Family of the *Frazers*, all Gentlemen, were at one time ſlain in fight by their enemies; and no leſſe then an hundred and fourty Gentlemen, of one name in *Yorkſhire*, waited on the chief, or principal man of their houſe, at that time high Sheriff.

Anſw. It is true indeed, that the Fabii iſſued out of *Rome* gates, on their coſt, and to their coſt, for it coſt them their lives, *Una dies Fabios, ad bellum miſerat omnes*, ſayes *Ovid*: And if the Apologer would have it thought, that the cuſtome was then to divide the eſtate amongſt the ſons equally, for the enlarging and preſervation of Families; the beſt he can make of it, is, that it was but a heatheniſh cuſtome, for the Romans were then heathens. And concerning his ſtory of the *Frazers*, I know not

why he ſhould make any mention of it, unleſſe he would have his Reader to conſider how much the *Fabii* and the *Frazers* did ſympathize, becauſe their names began both with a letter; as alſo, becauſe they were both of a number, and both of a fortune, for they were all ſlain by their enemies: and the *Yorkſhire* Sheriff (as himſelf ſayes) was the chiefeſt or principal man of that Houſe, that is, that he was of the eldeſt, or nobleſt Houſe; and therefore by his own ſaying, there was no ſuch cuſtome then in uſe as he ſpeaks of.

Proof 22. That the cuſtome of eldeſt ſons to inherit, hath been in uſe but of late times; for how elſe could it come to paſſe, that in this Kingdome there were at one time ſo many great and honourable Families of one blood, disjoyned in their ſeats, and diſtinguiſhed in their Armories, by different arguments; or who is ſo meanly ſeen in our Antiquities and Stories, as not to know it was ſo: and that many renowned Houſes (to ſpeak as *de magis notis*) *Plantaginates*, *Mortimers*, *Beauforts*, *Beauchamps*, *De la Poles*, *Nevils*, *Grays*, and the like, have grown and flouriſhed from one common Anceſtour, it cannot be refelled. But

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in theſe our times, we find ſo great a decay of ancient families, that if there be one Family in a ſhire of three hundred years continuance, very many others are ſcarce five deſcents in blood.

Anſw. The Apologer needs not think it ſo ſtrange, that there ſhould be ſo great a decay of Families, for being ſo well vers'd in Hiſtory, as he would ſeem to be, he muſt needs know, that many great Nations and Peoples, are not only decayed, but have utterly loſt their names: what I pray you is become of the twelve Tribes of *Iſrael*, who were a thouſand times more glorious then then the Families he recites? and our very next neighbours the *French*, do not know where their *Germane* Anceſtours called *Franci* did inhabit; only our *Cambro-Brittanni* can derive their deſcent from the Moon, but other Nations are not ſo happy.

And concerning thoſe honourable names mentioned by the Apologer, as *Plantagi-nets*, *Mortimers*, *Beauforts*, *&c.* it cannot be thought (as the Apologer would have it) that the cuſtome was then to divide the eſtate amongſt the ſons equally; for when a Family is gotten to an eminent height and power,

power, it is an easie matter to advance younger sons, by making some of them *Bishops* (as the use then was) who should help the rest, or by preferring them to offices and imployments of state; or by marrying them to heirs general, and we see at this day, that the honourable name of *Howard*, is as largely spred into as many several branches, as any of the rest were then, and yet I never heard of any disinheritance practis'd by them, or that they used to make an equal division of the estate amongst their children.

It is true, I think, that there are not many Families in one shire of three hundred years descent, though (doubtless) some are of much greater continuance; but the cause is not (as the Apologer would have it suppos'd) because eldest sons inherit; but it is rather the meer act, and ordinance of God; for it is only God who gives children, and if there be no children, the Family must needs extinguish; and we find in Mr. *Camden*, and in our ancient records and deeds of conveyance, that many hundreds of names, of noble and ancient Gentry, are either lost for want of children; or by marrying of the heirs general, and the Apologer

loger knows, that the Civil wars, treasons, manslaughters, felonies, and the like: have been the ruine of many noble houses, which could not have been prevented with all the Apologers natural reason; or by any free power, or care of fathers.

Proof 23. That it is far from the Law of Nature, or Paternal piety; the father dying intestate, the eldest son to become Lord Paramount of the estate, and not to be bound by Law to provide for brother, or sister, but at his own good liking, *aliud tempus alios mores postulat*; when we have a wiser age, we shall have better customes: and men both of learning and virtue, have broke this custome upon good considerations, and just causes, not upon spleen, by leaving their fortunes to strangers, or to a lustful issue, as some have done.

Answ. The Apologer cannot be ignorant, that if the father dies intestate (which the Laws suppose he will not do) being so much bound in conscience to provide for all his children) our Courts of equity do rectifie, and regulate the Laws in such cases: and the Civil Laws (as sayes he) ordain, that every son and daughter, shall have a legitimate or childs part, whether

the father dies inteſtate or no. And ſurely, I cannot think, but the Law does well, in leaving ſuch a large and abſolute right in eldeſt ſons; for were the eſtate (as the Apologer would have it) to be equally divided amongſt all the children, and the Lawyers and Neighbours ſhould be called upon to make the diviſion: every of the children would think his own part leaſt, and trouble the Courts for a new and better diviſion, until they had divided and brought the eſtate to nothing.

But I pray you mark the uprightneſſe of the man: it is, he ſayes, againſt natural reaſon, and paternal piety, that eldeſt ſons ſhould inherit the eſtate; but he no where ſayes, that it is againſt natural reaſon, and paternal piety, for fathers to disinherit their lawful children, and give their eſtates to ſtrangers and Baſtards: Nay, he ſeems to incourage them what he can; for they ſhall (ſayes he) not want preſidents, nor do any more then others have done before them, and will do after them.

Proof 24. That it is againſt natural reaſon (which is the grandmother of all Laws) that the temperate ſhould be ſubject to the intemperate, the ſober and wiſe

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to fools and franticks: That ſervitude proceeds not from the Law of Nature, but from Nature corrupted: That it is againſt natural equity, and againſt Nature her ſelf, that men ſhould be ſubject to beaſts, or inſenſible creatures: whereupon *Ariſtotle* diſputing the nature of rule and ſubjection, ſaith, that none are born ſlaves, but ſuch as Nature hath abridged of the uſe of reaſon; who being truly ſlaves, are utterly unfit to govern: upon which ground the ſame great Philoſopher prefers that form of policy, where the wiſeſt, and beſt, are admitted to the mannage of ſtate affairs; and therefore if it be Natures intent (as it is) to make all mankind reaſonable: how reaſonable is it, that they who are unreaſonable ought to be deprived of all right, and claim to any thiug (more then to ſuſtain nature) and debarred all ſuperiority, or ſeniority, which by Law, or cuſtome, might otherwiſe have faln on them; becauſe according to divine ahd humane Laws, man ought not to be govern'd by beaſt, ſuch as Idiots, and Franticks ſeem to be.

Anſw. Here is a note beyond *Elah*, but he cannot want his anſwer, for he hath it already: the effect of all this fair flouriſh,

being but this; that ſuch eldeſt ſons, or any ſons, who are natural fools and madmen, or extreamly and deſperately vitious, are not fit nor worthy to inherit.

But I know not what the Apologer ſhould mean by his alledging *Ariſtotle*; that none are born ſlaves, but ſuch as nature hath abridged of the uſe of reaſon; and that ſervitude proceeds not from the Law of Nature, but from Nature corrupted: if by the word ſervitude he means ſubjection, he groſly errs: for it as natural for a ſon to obey his father, as it is natural and pious for a father, to relieve, to inſtruct, and govern his ſon; but the words ſlave and ſlavery, are of ſo ill a ſound, and bad a ſence, that as no man is born a ſlave, ſo no man (methinks) ſhould either be, or be made a ſlave. Natural ſubjection does well, both in ſon and ſubject; but ſlavery is unnatural, and monſtrous, both in him that forcibly, and undeſervedly, inflicts it; and in him that ſuffers it, unleſſe it be for the cauſe of religion, and then it is an honour.

But, ſayes he, it is againſt natural reaſon (which is the grandmother of all Laws) that the temperate ſhould be ſubject to the in-

intemperate, the wiſe to the fooliſh: and therefore in natural reaſon, that ſon who is the wiſeſt and worthieſt ought to be heir, if it ſo pleaſe the father: for he is Lord paramount, and he muſt be the Oracle. But, Mr. Apologer, what if this your Oracle, the father (which is no very ſtrange thing) ſhould be fooliſh: for fools can get children as well as wiſe men; there is little difference betwixt either of them that way. Suppoſe, I ſay, that the father himſelf be fooliſh: why? what if he be? may the Apologer anſwer, fools are Chriſtians as well as other folks; and he may (by chance) for all that, make as good a choice of an heir, as a wiſer man; and this anſwer of his would be as ſolid, and as much weighty, as any other authority, or reaſon, he hath yet alledged, for his pretended free power of Parents, or againſt the rights of eldeſt ſons.

Proof 25. That it is no ſin, nor offence for a father, who hath eſtate in Fee ſimple, to diſinherit his eldeſt ſon, or any of his ſons, for he hath a lawful power ſo to do: *Ergo*, fathers may with a good conſcience.

Anſw. It is a hard matter to perſwade

ſome men what is ſin: our preciſe Separatiſts, and new Anglians, will acknowledge no ſin but infidelity: and ſome others there are of the Diabolical Sect, of *ede, bibe, & lude*, who think there is no ſin at all: but the Apologer is none of theſe; for he honeſtly ſayes, *Natura Divinitatis fulgor*, that Nature is a bright beam; or ſhining lamp of the Divinity: and he ſayes alſo, *Omne peccatum eſt Divinitati injuria*; that every ſin is a wrong, or an affront to God himſelf. And what can be more againſt Nature, then that a father ſhould diſinherit his own fleſh and blood, which are his children, and give his eſtate to ſtrangers: and what can be a greater affront to God, then that a father ſhould diſaffect and reject his children? whom God hath not only given him, but given them for his honour: for it is ſaid, Eccl. 3. and Prov. 17. that fathers are honoured in their children. and that the Crown, or glory of old men, are their childrens children.

The Apologer ſayes, that it is a monſtrous immanity in any man, not to have care to preſerve his *Species*, that is, not to have care to preſerve, and provide for his children: and can it be a monſtrous immanity,

nity, and not a ſin? he alſo ſayes, that every act in it ſelf, or by circumſtance, evil; is before God and man a ſin, and no way to be executed by a Chriſtian: That an act of it ſelf lawful, done againſt Law, is ſin; and that no Law is valid, where the thing it ſelf is unlawful and a ſin: and is it not then a ſin to disinherit an eldeſt ſon, unto whom, the Laws, both Divine and humane, give the right of inheritance, and which we alſo ſee confirmed by the general practiſe of all good Parents.

Proof 26. That we cannot in conſcience ſell, or give a weapon, to one whom we know intends to murder. Excommunications are impoſed on them who ſell armours or weapons to Turks. The rule of conſcience, not only commands a man to uſe well thoſe fortunes, which God hath beſtowed on him; but forbids him, either for affection or gain, to part with them to others who will abuſe them, leſt he partake of others ſin, which a Parent may do after his death, who parts from his eſtate, to a deſperate unthrift.

Anſw. It is true, that if we can aſſuredly know, that our goods will be ſpent to the diſhonour of God, the harm of the

Commonwealth, or to the hurt, or wrong of any man, we are neither to ſell nor give them to ſuch perſons as will ſo uſe them; and if an heir be deſperately vitious, there is no queſtion but his father may lawfully and religiouſly diſinherit him; but how can a deſperate ſinner, or unthrift, be known? We are divinely commanded, not to judge any man, *Rom.* 14. which is ſo to judge him, but by Gods grace he may be otherwiſe, and be hereafter a glorious Saint in heaven: when he that judgeth him (for ought as he knows, or can know) may himſelf be an abhorred reprobate; *qui ſtat, videat ne cadat*, he who preſumes moſt of his ſure footing, is in moſt danger of falling.

And though a ſon be vitious and an unthrift, doth it neceſſarily follow, that he that is once an unthrift muſt alwayes be ſo: We have daily experience to the contrary; many unthrifts prove the beſt husbands, for ſuch men commonly run out of one extream into another, and from prodigallity, fall to penury.

But if the eldeſt ſon be a natural fool, or mad man, he is not capable to mannage the eſtate; or, if (according to the Apologer)

loger) he turns Turk, and tramples upon all Laws, divine, and humane; I will ſay with the Apologer, that he is ſo unfit to inherit, that he is not worthy to live: but I cannot conceive how in conſcience an eldeſt ſon can be disinherited, meerly for his unthriftineſſe: for we may ſo eſtate our land (and yet ſuffer him and his heirs to inherit) that it ſhall not be in his power to hurt, or to overthrow his family.

Proof 27. That if in conſcience the whole inheritance of the father, is to come, without controul, to the eldeſt ſon; then muſt it of neceſſity be inferred, that the father, without his conſent, cannot give to pious uſes, or ſet out for his other children after his death. So, that if God ſhould bleſſe a father with many children, and croſſe him with as many misfortunes, his other children, and all his other charitable intentions, ſhould be provided for, only, at his ſons or heirs courteſie: for thereupon all donations to pious uſes, and to younger brothers for their portions, may be called in queſtion.

Anſw. Eldeſt ſons are not to inherit all the eſtate, but only the greateſt part of it, fathers being to provide for all their children.

children. And I deny not, but that every man is bound in his Chriſtian duty, to do what good he well can to his neighbour, or Chriſtian brother: for ſayes an Apoſtle, Rom. 14. *No man is born to himſelf*; and the Apologer hath a good ſaying, *Da quæ non potes retinere, ut conſequaris ea quæ non potes amittere*: Give of thoſe things which thou canſt not keep, that thou maiſt gain ſuch things as cannot be taken from thee.

But Mr. Apologer, I muſt tell you, charity begins at home: *Proximus quiſque ſibi*, we muſt firſt look upon our ſelves and children, and then upon our neighbour, or Chriſtian brother; but i'le come nearer to you: put the caſe, that a father were to make the Church, or Commonwealth, or children his heir; which of all theſe may he the more lawfully do?

The Apologer it may be would be on the Commonwealths ſide, for then the eſtate would be divided, and he might chance to have a ſhare amongſt the reſt; but I muſt ever be on the childrens part, and will give a plain Text for it: S. *Paul*, in his fifth Epiſtle to *Timothy*, ſaith, that he who hath not care to provide for his family, *doth deny*

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the faith, and is worſe then an Infidel; but it is no where ſaid, that he who hath not care to build Churches, Colledges, and Hoſpitals, doth deny the faith, and is worſe then an Infidel.

Proof 28. That it plainly appears out of the ſacred Text it ſelf, that fathers had a power amongſt the Jews, to cauſe their children, for riot, diſorder, and unthriftineſſe, to be ſtoned to death: *Ergo*, they had power to disinherit, for the greater ever includes the leſſe; and that I may not ſeem to ſpeak without book, I will ſet down *Moſes* words, which are as follow: *If a man have a ſtubborn and rebellious ſon, that will not obey the command of his father; and being chaſtiſed ſhall be unreclaimable, they ſhall apprehend and bring him to the Seniors of the city, and to the place of juſtice, and ſhall ſay to them, This our ſon is incorrigible, and diſobedient: contemns or monitions, abandons himſelf to riotous exceſs, and is a drunkard. The citizens ſhall then overwhelm him with ſtones, and he ſhall die: That you may take evil from among you, and that all Iſrael hearing it may fear*, Deut. 21.

Whence we may collect how odious a crime unthriftineſſe, & riot, was among the peo-

people of God, and what ample power the father had, to puniſh the ſame in his child: for if we obſerve well the manner of the proceſſe, between the father and the child in this caſe, we ſhall find, that the father was witneſſe, accuſer, and judge of his own cauſe: for we read not that the Senators of the city did give ſentence, or further examined the proofs of the fathers accuſation; but their preſence, giving as it were allowance to a fathers power and intention to puniſh his ſon; the people might, without more inquiry, ſtone to death, ſo evil a deſerving child; which being well conſidered, my hope is, that it will never hereafter ſeem unlawful, or againſt conſcience, that a father ſhould disinherit his eldeſt, or any of his ſons, for the cauſe only of unthriftineſſe and riot.

Anſw. It is (they ſay) a ſhame to bely the devil, then much more to bely Gods choſen people; for had the Iſraelites been ſo much mercileſs, as the Apologer would make them: would *Moſes* himſelf (and from the immediate mouth of God himſelf) would he have ſaid, Deut. 8. that as a *father diſciplineth his children, ſo doth God diſcipline his people*: and would the royal

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Prophet (who was a man according to Gods own heart) would he have ſaid, *Pſal.* 102. and 118. that the mercies of God are infinite, and far above all his works: and that as a father hath compaſſion of his children, ſo hath God compaſſion of them that fear him.

And would he have done ſo to his traiterous and inhumane ſon *Abſolon*, whoſe villanies were ſo tranſcendent, that they have out gone all example. Would he have pardoned and compaſſionated ſuch a ſon; and wiſhed he could have died for him, if the Law and practiſe of the Iſraelites had been put to death their riotous and unthrifty children, which are offences ſo mean, that in reſpect of *Abſalons* inhumanities they deſerve no mention.

It is true, the Jews had a power permitted them to bring their riotous and rebellious ſons to the Seniors of the city, and to the place of judgement; but theſe Senators were not to take the bare word of the father, and ſo to proceed to judgement: for what can be more unnatural and impious, then that a perſon accuſed ſhould not be heard ſpeak: and that Judges, upon a bare allegation, without and examination

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or proof, ſhould immediately give ſentence of death.

And ſurely, we may well believe, that this Law was only permitted the Jews (as was their Law of divorce, *Matth.* 19.) or rather that it was made *in terrorem*, for terrour, and not for execution; for the words are, *that all Iſrael hearing it might be afraid*; and we find not that any ſon, meerly for his riot and obſtinacy to his father, and by the procurement of his father, did ever yet ſuffer death.

And we may piouſly believe, that our bleſſed Saviour had himſelf ſome reference to this ſtoning Law, when he ſaid (ſpeaking to the Jews) Matth. 7. Luke 11. *Which of you is it? of whom, if his child ſhall ask bread, will he reach him a ſtone?... Which of you is it?* as if that Divine mouth ſhould ſay, is there any ſuch man amongſt you? or, if there be ſuch a man, what man is he? or is he, or may he be called a man? who can find in his heart to reach ſtones, wherewith to kill his own children.

And concerning his inference, that fathers have a free power to diſinherit their eldeſt ſons for unthriftineſs and riot; becauſe by this Law, Deut. 21. the Jews had a free

free power over their childrens lives, and the greater includes the leſſe: his reaſon is to as much purpoſe, as his was, who being asked, whether great heads or little heads had the more wit; made anſwer little heads: becauſe, *omne majus continet in ſe minus*: meaning, *Omne majus caput continet, in ſe minus ingenium*.

For the Apologer cannot but know, that disinheriting, and putting to death, are two diſtinct things; and if they be unjuſtly done, it is hard to ſay whether is the greater injuſtice or wrong: for it is ſaid, Eccl. 34. *He that taketh away his neighbours living, killeth him*: And ſurely it is much more foul and ſinful, for a father to disinherit and undo his children, then for one neighbour to defraud and undo another; and eſpecially to disinherit his eldeſt ſon, whom the Laws, both divine and humane, have made the heir, or the chief Lord and Governour of the family.

Proof 29. That becauſe examples in all controverſies of fact, are the beſt fortifications, I will therefore in illuſtration of the premiſes, add ſome few to the former; drawn as well from royal preſidents (by whoſe patterns, *totus componitur orbis*) as from

from inferiour persons, whose qualities best fit the condition of our present subject: and if Kingdomes and Commonwealths have favour'd it, then certainly by all arguments, *à majori ad minus*, it may much rather be done, and ought to be suffered in private Families.

The offering of *Abel*, was better accepted of God, then the offering of *Cain*. *Japhet* the youngest son of *Noah*, had Europe allotted to him for his inheritance, which in all arts and uses of life, far excels Affrick and Asia, and all the rest of the earth.

Answ. Examples are, indeed, the light and life of natural reason; *experientia docet*, hath ever been, and will ever be, the most sure rule of rational judgement. And surely, Mr. Apologer, your examples will want both in weight and number: if you will go that way to work for your younger brothers, we shall be able to out-vy you, at a thousand to one.

The sacrifice of *Abel*, sayes he, was better accepted of God, then the sacrifice of *Cain*: he confesses that it is not fit to urge this, and I confesse it is to no purpose: for it concerns neither inheriting nor disinheriting,

riting, there being then, and for many ages after (as himſelf ſayes) no ptoprieties, or eſtates in the world at all.

And concerning *Japhets* large portion, which was no leſſe then Europe; for ſo (ſayes he) all authentique Hiſtories do witneſs: he will have much ado, to get any man of authentique reaſon to believe him; for he muſt firſt prove, whether Europe were then known by that name or no; and whether it was then ſo divided, and bounded, as now it is: as alſo, which of his ſons had America. It may be he will ſay the eldeſt ſon, which if he had, having a third part of the world beſide (whereof Europe is the leaſt) and therefore the fitteſt for the youngeſt ſon: he had no reaſon to find fault with his father; for (next to *Adam* and *Noah*) he was the greateſt Monarch for territory, and one of the leaſt for dominion, or people, that the world ever had.

Proof 30. That the disinheritance of *Iſmael*, the eldeſt ſon of *Abraham*, and of *Reuben* the eldeſt ſon of *Jacob*, are invincible arguments of a Fathers free power.

Answ. It is true, that *Ismael*, who was the eldest son, did not inherit; and the reason was, because he was begotten on a handmaid, and not on a wife: and if the Apologer would make this an invincible argument (as he calls it) of a fathers free power; he must get new Laws made, and remove lawful issues, to make room for bastards: though *Ismael*, (as the Law then was) is not to be reputed illegitimate.

Reuben did deservedly forfeit his birthright, for he dishonoured his fathers bed; which had he not done, he had not been disinherited: for his father termed him, *prior in donis, & maior in imperio*; as also, his dignity, his power, and his strength.

Proof 31. That the examples of *Esau* and *Jacob*, and of *Ephraim* and *Manasses*, where the younger brothers were by divine election preferred before the elder, are unanswerable proofs of a fathers freedome in disposing of his estate.

Answ. These examples of *Jacob* and *Ephraim*, so much and often advanced by the Apologer, make more for the advantage of eldest sons, then for the pretended free power

power of Parents: for *Esau* demanded the prime blessing of his father (and his father intended to give him the blessing) because he was the eldest son: which his right, he freely and willingly (and *volenti non fit injuria*) had before sold to his brother.

And when *Jacob* had put his right hand upon the head of *Ephraim*, intending to give him the prime blessing; their father *Joseph* was much troubled, that his father should do so unjust a thing; and thinking that *Jacob* was mistaken, by reason of his blindness, he endeavoured to remove his hand to the head of *Manasses*, saying, this is my eldest son, put therefore thy right hand upon his head; but *Jacob* refused, saying, I know my son, I know: and therefore unless fathers can infallibly know the divine will, by divine revelation (as *Jacob* did) or have such as *Jacob* had, concerning his eldest son *Ruben*, they ought not to disinherit their eldest sons at all.

To conclude, these examples so much urged by the Apologer, do plainly show an apparent and undeniable right, belonging to eldest sons: and make nothing at all for the pretended free power of Parents; but do, indeed, chiefly concern the divine pro-

vidence, and eternal predeſtination, and did prefigure the converſion of our forefathers the Gentiles, according to the divine word, and divine Ordinance, *Gen.* 25. *Malach.* 1. The elder ſhall ſerve the younger: and will not the Apologer give God leave to diſpoſe of his gifts and graces, as himſelf beſt pleaſes.

Proof 32. That it appears by *Solomon*, his ſucceeding his father *David*, that *David* had power both of the Laws of God and man, to give his kingdome to the worthieſt, which he deeming to be *Solomon*, did (upon the entreaty of his wife) give him the Kingdome, though he was the youngeſt ſon.

Anſw. The preferring of *Solomon* to the crown, doth no way impeach the rights of eldeſt ſons: for as *David* was himſelf divinely choſen, being the youngeſt ſon; ſo we may aſſuredly believe that he elected *Solomon*, who was his youngeſt ſon, to ſucceed him, moved only thereunto by divine revelation, for it cannot be thought (being as he was) a man according to Gods own heart) that he would otherwiſe have done

done it. And this good King had more reaſon, and more freedome to diſpoſe of the Kingdome, then any other King hath ſince had: for there had been no ſucceſſion of Kings before him to eſtabliſh a right, nor any Laws made by the general votes of the people, to erect a courſe of inheritance, concerning the Crown; and *David* himſelf did not inherit, but was divinely elected and created King.

But I would have the Apologer tell us, how many other Kings there were of *Iſrael* or *Juda*, who were younger brothers; and if he would make this an argument of disinheritance, he ſhall much abate his pretended free powers of fathers, and leave it in wives (for *David* was entreated by his wife) which will make more work for women, who are already too buſie in ſuch actions, and others that belong not to them.

Proof 33. That *Auguſt. Cæſar* did not ſettle the imperial ſucceſſion upon his Grandſon *Agrippa Poſthumus*; but upon *Tiberius*, who was no kin to him; becauſe he thought him more fit to govern. *Choſroes*, King of *Perſia* made *Medarſes* his

younger ſon conſort with him in the Empire, leaving out *Sinochius* who was his eldeſt ſon.

The Emperour *Ferdinand* left the Empire, with *Auſtria* and the Kingdomes of *Hungary* and *Bohemia*, to *Maximilian* his eldeſt ſon: unto his ſecond ſon *Stiria* and *Carinthia*; and to his third ſon, the Earldome of *Tirol*. *Philip* King of *Spain*, gave unto his daughter the ſeventeen Provinces.

Anſw. The Apologer, having done with his divine, and (as he calls them) invincible examples; beſtows upon us ſome other preſidents, as little invincible as the former, which alſo ſhall be anſwered.

Auguſtus came in by conqueſt, and therefore might the better appoint his Succeſſor; and he made ſo good a choice of one, that inſtead of *Tiberius*, *Nero*: he was for his intemperance called *Biberius mero*.

Choſroes, the Perſian King, made his younger ſon conſort with him in the Empire, but it coſt him dear: for the people deteſting ſo unjuſt an act, took arms againſt him, expelled both him and his uſurping conſort; and put the Scepter into the hands

hands of *Sinochius*, who was the eldeſt ſon.

The Emperour *Ferdinand* did well, in leaving his younger ſons ſo well; but he did better, in leaving his Kingdomes and Empire unto *Maximilian* his eldeſt ſon.

And *Philip* King of *Spain*, rather lent then gave the ſeventeen Provinces unto his daughter, the late *Arch Dutcheſs*; for ſhe was not then likely to have children, being ſo far in years; and his gifts were no leſſe prodigal then politick: for he gave her more then he had to give, or was able to keep.

But doth this make any thing againſt the rights of eldeſt ſons, or for the pretended free power of Parents: It is well known, that no heriditary King can (as meerly of himſelf) diſinherit his eldeſt ſon, the Prince; nor (as I have credibly heard) do any act, (as meerly of himſelf) which can impeach the rights and prerogatives of the Crown: by which it is clearly evident, that eldeſt ſons have the only right to inherit; and that fathers cannot have ſuch a free power, that they may at their pleaſure, lawfully, and religiouſly, diſinherit them: for, *Re-*

gis ad exemplum---- Subjects ſhonld follow the examples of their Soveraigns.

Proof 34. That our Proto-parent *Brute*, divided this Iſland amongſt his three ſons: *Loegria*, or *England*: to *Locrinus*, *Albania*. or *Scotland*, to *Albanact*; and *Cambria*, or *Wales*, to *Camber*. King *Leir* gave his kingdome to his youngeſt daughter *Cordeilla*: and King *Roderic* divided *Wales* amongſt his three ſons, which diviſions are ſtill called to this day, North-Wales, South-Wales, and Powes-Land.

Anſw. The Apologer may do well to make it firſt appear there was ſuch a man as that noble Trojan: The times are grown incredulous and critical, and bare words gain little credit; and our grand Hiſtorian, Mr. *Camden*, whom the Apologer terms the ſingular ornament of *England*, is almoſt an Infidel concerning this Hiſtory.

As for King *Leir*, the ſtory declares that his elder daughters were rebellious and undutiful, and (as Rebels) were fit to be depoſed and disinherited, and the ſtory alſo tells,

tells, that the youngeſt daughter, who was the Queen, was a moſt infortunate Princeſſe: for her Nephew *Morgan*, who was the eldeſt ſon of her eldeſt ſiſter, took arms againſt her, diſcomfited her, and forced her to kill her ſelf.

And for the diviſions of King *Roderic*, it is alledged to as little purpoſe as the other: for neither *Brute* nor *Roderic* did disinherit their eldeſt ſons; but gave them a better and greater part then unto the reſt: and ſurely, no man can think they did well; to make ſuch diviſions, becauſe their actions did not proſper; but now (God be thanked) they are again reunited into one glorious Monarchy; and may they ever ſo continue (as long as the world ſhall continue) in the Koyal Line of our Gracious Soveraign, who is deſcended to his Imperial Diadem, by the moſt noble, and only rightful way of inheritance: which is, from the next of blood, to the next of blood; or from one eldeſt ſon unto another.

Proof 35. That there is a Law, or cuſtome in *Ireland*, called Taniſtrie: by which the land, and Chiefty of a name after the Pre-

Predeceſſours death, is not awarded to the eldeſt ſon, but to the worthieſt: the judgment whereof is left to the people, and ſuch Tennants as have intereſt and right of ſuffrage; as *Alexander* the great (though as 'tis apparent in the *Macchabees*) very falſly ſaid to have left his Empire: And that the tenure or cuſtome of Gavelkind, allows every ſon to have an equal ſhare in the eſtate.

Anſw: It is marvel that the Apologer will acknowledge the Book of the *Machabees* to be Apocrypha, becauſe it ſeems to make ſomething for his pretended free power of Parents: and it is marvel he doth not condemn this Iriſh cuſtome to be Apocrypha; for there is nothing can make more againſt his power, becauſe upon the matter, the futhers authority, and the fortunes of the family, are in the power of the Tennants: he ſayes, that all cuſtomes which are againſt Law, are void by the civil Law; and he knows alſo, that a great part of this prople are ſtill called the wild Iriſh; and ſurely, ſuch cuſtomes are fitter for wild Savages, then for civil Chriſtians.

And

And concerning the tenure, or cuſtome of Gavell kind; it is true, that it gives an equal ſhare of the eſtate to every ſon: but, as I take it, this cuſtome was chiefly, and I think only, in Kent: and the Apologer grants, that ſome have altred it in their private Families, by Act of Parliament; and (doubtleſs) the cauſe hath been for the preſervation of their Families, which, by ſuch diviſions, could not chuſe but come in ſhort time to nothing; and level the beſt and greateſt of our Gentry, to the degree of the meaneſt Vulgars.

Proof 36. That *Briand Lyle*, or *Fitzt earl*, Lord of *Abergavenny*, having two ſons, both leaprous, built for them a Lazaretto or Spittle; and gave to, *Miles*, Earl of *Hereford*, the greater part of his Patrimony from his children.

Jane, daughter of *Hugh Courtney*, and heir to her Mother, wife of, *Nicholas*, Lord *Carew*, diſinherited her eldeſt ſon *Thomas*; *quoniam, minus reverenter matrem haberet*: and parted her lands, which were goodly among her three younger ſons, of whom are ſprung three worſhipful Families of the

Carews,

Carews, called *Hacomb*, *Ancony*, and *Bury*: So, that God by the ſucceſs crowned the fact, and confirmed the lawfulneſſe of partage.

Anſw. The Lord *Abergavenny* did well in giving away a great part of his lands from his two ſons: for a Spittle was more fit for ſuch ſons then an inheritance; yet he left them a great part of his lands, and (doubtleſs) would have left them all, had they not been leprous and unfit.

And the Lady *Carew* did well in giving her lands to her younger ſons: her eldeſt ſon being heir to his father, and having (as may be thought) a ſufficient competency of eſtate; but the true cauſe was, becauſe he was undutiful, which had he not been, it is likely ſhe had given him the greateſt part, if not all of her inherited lands.

And you know Mr. Apologer, there is a different caſe betwixt an eldeſt ſon, who inherits an eſtate from his father, and a daughter, who is an inheritrix: for the ſon is to do that which hath been done to him; and as he received an inheritance from his father, becauſe he was the eldeſt ſon:

ſon: ſo is he bound in conſcience not to diſinherit his eldeſt ſon, becauſe he would have been loth to have been diſinherited himſelf; and that which we would not that others ſhould do to us, we are not to do to any other, *Matth. 7 Luke 6.*

This is the very corner ſtone (as I may well call it) of the Law of Nature, and of the Law of Grace: eſpecially, for ſo much as concerns morality and diſtributive juſtice; but women (who are no fit preſidents for men) have a greater freedome then men in this caſe: for they inherit by way of Parcenary, and every daughter hath an equal ſhare in the eſtate, though the eldeſt, by reaſon of her Seniority, hath the priviledge to chuſe firſt: and an inheritrix hath the name of her Family extinct in her ſelf; and therefore may at her pleaſure diſperſe her lands amongſt her ſons, the better to preſerve the memory of her ſelf, and Anceſtours, from whom ſhe is deſcended: and no marvel, though God did bleſs with good ſucceſſe the good acts of this Lady, for ſhe did both juſtly and wiſely.

But who hath known an eſtate long proſper, where a dutiful and deſerving eldeſt ſon

ſon was disinherited by his father; I muſt confeſſe, I never did: ſuch unrightful and lawleſſe heirs, may be likened to the Baſtard plants (which the Wiſe man ſpeaks of, *Wiſd.* 3. and 4.) that cannot take deep root, nor lay ſure foundation: So that all theſe examples, by the Apologer alledged, are like his other arguments; they either make againſt himſelf, or ſerve to no purpoſe.

To

To the Reader:

I Have here anſwered (as well as I can) all the Apologers proofs and reaſons, on the behalf of his younger Brothers; and I confeſs, that (according to the beſt of my poor judgement) I have not found any one firm, or ſinewy argument, which may ſatisfie any reaſonable underſtanding, in proof of his ſo abſolute a free power of Parents; or againſt the impregnable rights and prerogatives of eldeſt ſons.

But I muſt not uſurp upon anothers right; the cenſure belongs to the impartial and judicious *Reader*, unto whom I humbly commend it.

THE

Second Part:

Wherein is Treated of,

The preſervation of Families.

The free power of Parents.

The Rights of eldeſt ſons.

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1548.

The preſervation of Families.

ELder Brothers (ſayes the Apologer) either ſeated in their fathers wealth, or poſſeſſions, or having more then hopes to enjoy their fortunes, do ſometimes love truly neither themſelves nor any Body elſe, but abuſing that, which indeed might gain the love of God and man, and eaſily maintain their hereditary honour, loſe themſelves in vanity and moſt idle courſes; yea, in their fathers lives, ſo ſtrangely carry themſelves, preſuming rather on precedence of birth, then worth; as though the Law of God and Neture, and all other Cannon, Civil, and National Laws, and conſtitutions, and cuſtomes, ſprung from them, could not either in reaſon, or religion, bar them of that which they expect, or give to a well deſerving younger brother, any little hope, lawfully to ſhare with them, the leaſt part of their fathers inheritance.

Their harſh and malevolent diſpoſition, is graphically delineated by our Saviour, *Luke* 12. and 15. where our Saviour was willed by one, to require his brother to divide the inheritance with him, which was the ſuit of a younger brother, aggrieved at the churliſh iniquity of the elder.

In former ages elder brothers were generally of better temper in ſpending, and if they had no humour to get, yet had they a care to keep that was left them, & ever held themſelves bound by Religion to provide for their younger brothers and ſiſters, left to their diſpoſe, which now is far otherwiſe; for ſome elder brothers are found to ſpend more in a year idly, then would prefer or maintain a whole Family nobly; and to ſuffer their brothers and ſiſters to ſhift, which (as theſe times ſhape) is oftentimes, to live either lewdly or miſerably.

Who ſees not in theſe our times many unbridled youths? ſo violently carried away with the humour of ſpending, that they neglect brother and ſiſter; yea, bring to extream miſery their natural mothers, after their fathers death, by their unthriftineſſe and riot: and many a hopeful and well-

well-deserving brother, is left to the mercy of this whirlwind.

It is well known to all the wise and temperate, whose judgements passion doth not oversway, how great an enemy prodigallity and unthriftinesse is to all manner of goodnesse, and how cunningly she hinders the increase of all virtues, in those whom she raigns; for unthriftinesse is one known name of many hidden sins.

A debauched heir, wallowing in riot, is likely in his shrowd to bury the memory of all his Ancestours virtues, which should live in him and his progeny, as his progenitours did in theirs; and it is no lesse dishonour to play away our Predecessours labours, then to piss in our Parents ashes, or rase their monuments.

Surely it is clear, that all unthrifty courses are displeasing to God, and contrary to his honour: And how can he be able to serve his Countrey, who in short time will not be able to serve himself with necessaries wherewith to live; but must of force be maintained, like a drone in a Commonwealth, out of others labour.

And for his Family, what greater dishonour

nour can it have, then an abſolute overthrow; whereby the noble acts and honour gotten to it, by virtuous Predeceſſours, are buried in oblivion; and the preſent, and future hopes of all worldly and lawful honours (virtues temporal reward) are quite taken away.

Can there a greater ſin be committed againſt the honour and eſſence of a Family, then to be ſpoiled of its honour, and life it ſelf: for in theſe our times, well gotten goods, and uſed as they ought, are the only ſoul, by which a Family, and all the virtuous acts which it hath done, may live.

Nature teacheth the ſilly Bees, in their Commonwealth, to do to death their Drones, who live of others labours; and ſhall it be thought unlawful for a father, ſo to puniſh an incorrigible unthrift, who will not only live of others labours, but alſo ſubvert the honourable endeavours of his noble Anceſtours.

To conclude, what puniſhment can be thought ſufficient for that reaſonable creature, born in a civil ſociety of men, to whom Nature hath not been a ſtepdame in beſtowing her bleſſings, and whoſe name

and

and Family hath been enobled, and enriched, by the virtue and industry of many worthy Predecessours, who shall through disorder, and inordinate desires, habituated in him by custome, and evil conversation, become an unreasonable, and unmeasurable sinful, and shameful creature; a debauched Bedlum, a wild American, a most intollerable madman, a thing unworthy the name of a man; a prodigal shall I say, or a prodigy? who contrary to all rule or orders of the most barbarous society of men, takes away, by his outragious impiety, the soul, as I said, of all his Ancestours virtues, who being dead, yet long might live in their posterity, and consumes the womb of his family, (viper like) wherein he was born. And without all remembrance of his obligement to the dead (whom as having his being from he ought to honour) or respect to the living (to whom he should be a comfort) devours in some sort, them of his own *Species* Society and blood, all which the Cannibals do not: for though they feed on their Species, which are men like themselves; yet they hunt after strangers, and nourish themselves with others

fleſh, obſerving ſtill ſome Law of Society amongſt themſelves, which our civil Monſter doth not: for he contrary to all courſe of Nature, ſucks oft times the blood of his neareſt and deareſt friends; namely his children, brothers, and ſiſters; yea, ſome of theſe furious feinds, have brought their all tender Parents, to the greateſt of all woes, beggery in their old age; and all this to maintain, by fraud or force, a damned crew of roaring devils, in the ſhapes of men, of each of whom, we may ſay dividually;

Talis Bacchus erat, talis
Gorgontua vultu;
Tale triplex mentum,
Pantagruelis erat.

So did old *Bacchus*, and
Gorgontua ſwell;
And ſuch a Bulchin was
Pantagruel.

And of the whole madcap, fraternity; for

for they will be ſworn brothers, *fraterimi aut fratres in malo*, we may well ſay.

Peſtis, qua gelidum, Boreæ, violentius axem;
Nulla vel infecit nulla vel inficiet.

A greater plague, to this
our Northern clime;
Never yet came nor can
in after time.

Moral Law-makers, in ancient times pretermitted to make Laws againſt offenders of this Nature; and being asked why? they anſwered that no man could be ſo impiouſly ingrate, or iuhumane; whereby it is evidenced how tranſcendently hainous the offence was adjuged by them, and how ſevere puniſhment (were they to make Laws in theſe our corrupt times) they would preſcribe for ſuch cardinal Criminals.

To the Reader:

I Have here collected the beſt fruits of the Apologers Treatiſe on the behalf of younger brothers; for indeed, I can find no other goodneſs in it, but only theſe bitter (though not unwholſome) invectives againſt unthriftineſs and riot. And I could wiſh they had been expreſſed in a more clear and genuine manner; for he hath delivered them in ſuch a ruffling way, as though he were to conjure the ſpirit of unthriftineſs out of the Prodigal himſelf, when he was in the heat or midſt of riots: But though they cannot ſo well charm and pleaſe the overcurioufneſſe of ſome mens fancies, who can reliſh nothing, but pathetical and dainty deliveries: yet they may ſerve well enough to inform and ſatisfie the underſtanding and

and judgement; for they plainly and truly declare the infinite miſeries and miſchiefs, which are ever the inſeparable concomitants of unthriftineſs and riot.

I need not ſay how much impertinent to the matter in queſtion theſe invectives are: and how little the matter of unthriftineſſe would be amended, if younger brothers were to inherit. But though he chiefly perſonates elder brothers; the inſtruction may alſo ſerve for younger brothers, and all men who are prodigal: and eſpecially prodigal fathers, whom he terms (and not unworthily) to be worſe then Cannibals: and it is pity the Laws have no better execution, concerning this great and too general a vice: for, ſayes he, the Civil Laws appoint Curatours for prodigals (as for madmen) and guardians likewiſe of their eſtates, the want whereof is the ruine of many great houſes in *England*.

The Apologers Epiſtle examined.

THe Apologer ſayes in his Epiſtle, that he publiſhed his ſaid Treatiſe for the general good of great Brittain; and out of a ſingular reſpect, which as a Patriot, he bears to Gentlemens houſes: good motives, I confeſſe, if his intention or performance had been according; but how can it be to the general good of great Brittain; when eldeſt ſons, who are a great part of Brittain muſt ſuffer in it: for he would have it thought (and hath done what he can to prove it) that they have no more right to inherit then other ſons: all is as pleaſes the father, for he is the free and abſolute Lord of the eſtate, and may lawfully and religiouſly diſpoſe thereof at his pleaſure.

But is this the way to preſerve Families? it is (ſayes he) the beſt and only way, eſpecially, if fathers conform themſelves to theſe two rules.

The firſt rule or way is, that they divide the

the eſtate amongſt the ſons equally, according as the Civil Laws ordain, and as was the practiſe of the primitive Church.

The other way or rule is (and this he thinks to be the more rational and better way) that the wiſeſt and worthieſt ſon doth inherit.

As concerning the firſt, he needs no other confuting then his own words: for he ſayes, I muſt confeſſe, that the cuſtome of leaving the child eſtate to the eldeſt ſon, hath of later times been much embraced by our gentry for the preſervation of their Families, for which it was invented; and that they did this, led with an ambition at the example of Princes.

And he alſo ſayes, that the more general practiſe of our time among Parents is, to leave either all or moſt part of their eſtates unto their eldeſt ſons: this (queſtionleſſe was firſt deviſed in former ages for the preſervation of a Family; and to raiſe one who might be a comfort to his brothers, ſiſters, and Family, and in whom his progenitours virtues might live to the world, and I will not deny but that the partition of lands, may reduce in the end, a goodly eſtate

ſtate to nothing, or to ſo little, that it may be compared unto an attome in the Sun: and how I pray you can an eſtate be preſerved, if the way or means that ſhould preſerve it, will in time, and in a ſhort time, bring it unto the degree of an attome.

And concerning his other rule or way, which is, that the wiſeſt and worthieſt ſon ſhould inherit; I deny not, but that wiſdome is a great means to preſerve a Family, and that wiſeſt ſons are the fitteſt to be imployed in a Body politick, or ſtate generall: but it is not ſo fit that younger brothers, becauſe they are a little wiſer then their elder brothers, or becauſe their fathers think them the wiſer, ſhould therefore inherit the greateſt part of the fathers eſtate, for it would be an apparent injuſtice, and wrong to the eldeſt ſon; unto whom the right of inheritance doth cheifly and only belong.

But admit the wiſeſt ſons were to inherit; who I pray you ſhould be the judge and chooſer of theſe wiſe ſons? Why? who, will the Apologer ſay, but they that got them, for they have a free and abſolute power to diſpoſe of the eſtate: but what

if

if the father be not wiſe himſelf, or have not a wiſe ſon at all, both which do often happen: Why then, perhaps, will the Apologer ſay, that the Commonwealth is to inherit, for ſayes he, *intereſt Reipublicæ, ut quilibet re ſua bene utatur*; it belongs to the Commonwealth that eſtates be managed in ſuch a manner, as may make moſt for the good of the Commonwealth: it would require a volume to ſhew all the abſurdities and inconveniences which would neceſſarily ariſe out of this abſolute power in Parents, but I will inſtance only two.

The firſt inconvenience or miſchief is, that were there ſuch a power in Parents, to make choice of what heirs they would; and were accordingly fully perſwaded that they might lawfully and religiouſly ſo do: they would not only be in danger to be blindly led by their own affections and will; but would ly open to the advantage of every cunning Sycophant, and ill-minded man, who under colour of friendſhip, would perſwade them to effect ſome of their ſons, and reject other ſome, and to give one ſon more then to another, that ſo they might fall into diſſention and diſcord, which could

tend

tend to no other, then an utter ſubverſion of the Family: for an houſe in it ſelf divided cannot ſtand. And that which would moſt move theſe Sycophants and ſowers of diſſention, would be their own private ends, and ſelf intereſt, a motive which bears too great a ſway all the world over. But the greateſt peril of Parents would ariſe from the ſly practiſes of their wives, who would be ſure to labour hard for the unworthieſt ſon; for womens affections are commonly as blind as they are, and they uſe to ſwallow flatterers for friends: and if the wife be wanton (which is no great wonder now adayes) ſhe would be ſure to endeavour what ſhe could, to preſer ſuch a ſon whom ſhe thought her husband had leaſt part in: and ſecond wives (as having more cauſe then any other) would be ſure to labour hard for their own children, without any reſpect to the rightful courſe of inheritance, or to their husbands other children by former wives; and there is no doubt to be made, but that all wives would be as buſie this way as Bees, if their husbands ſhould permit them; and their husbands could not hinder them, if they ſhould

have ſuch a ground to work upon as is the pretended free power of Parents; for when there was no ſuch thing dream'd of (as is that monſtrous power) yet wives were then ſo bold, to negotiate with their husbands of this matter, as in the examples of *Sara*, *Rebecca*, and *Cethſabee*, the wives of *Abraham*, *Iſaac*, and *David*, but theſe wives were moved to do as they did, by divine revelation, and it pleaſed even God himſelf to make them his agents, and inſtruments of his divine Ordinances; but that which would moſt move moſt of our wives, would be a violent ſpleen, and blind affection, without any reſpect to juſtice or order, which could not chuſe but draw on an utter ſubverſion of innumerable Families.

The ſecond inconvenience or miſchief would be, that were there ſuch a power in Parents, that they might lawfully and religiouſly make choice of what heir they would, there would be a perpetual diſſention amongſt the ſons, and conſequently, a confuſion and overthrow of the Families: for every other of the ſons would be ſure to malign, and envy that ſon, who

ſhould

ſhould be preferred to the inheritance, unleſſe the ſon ſo preferred, had a native, natural, and undoubted right thereunto; and that there were alſo, a general practiſe of all good Parents, concurring (as it is in the caſe of eldeſt ſons) to confirm it: and and this appears by dayly and infinite preſidents; ſome whereof the Apologer himſelf recites: as that of *Choſroes* King of *Perſia*, *Leir* King of *Brittain*, and that great example ſo much urged by him, of the disinherited *Eſau*: For *Eſau*, though he ſold his brother the Birthright (and *volenti non fit injuria*) yet being disinherited, he purpoſed to kill his ſaid brother, and (doubtleſs) had done it, if *Jacob* had not fled, and baniſhed himſelf for many years, from his own father and countrey; or rather indeed, if God himſelf had not relented, and mollified the obdurate and reſolved heart, of this fierce and offended brother: And if *Eſau*, would for this have killed his own brother, and a good brother who never wronged him in this, or any thing elſe; for *Eſau* had before freely and willingly ſold him the birthright; how much more willingly and readily would he

have revenged himſelf upon others nothing ally'd unto him, who ſhould have procured his disinheritance, which is indeed the greateſt injury that can be done to man in this world; for our eſtate and birthright is as our life, and whoſoever takes away the one, doth endeavour (as much as in him lies) to kill the other; nay he doth kill, and more then kill the other, for it is ſaid, *Eccl.* 34. and 40. *He that taketh away his neighbours living killeth him; and that it is better to dy then to want.*

You may ſee here, how much the Apologer doth err in his zealous care, which (as a Patriot) he bears to the glory and good of Gentlemens houſes, by alledging, that that for a reaſon, or cauſe of their preſervation, which would be their undoubted overthrow.

That indeed which doth moſt preſerve a Family, are theſe two things.

The firſt is children, and chiefly good children, and if there be no children, the other collateral heirs, who are the next in blood, whom the divine, and all good humane Laws have ordained to inherit.

The ſecond is, lands and goods well gotten,

ten, or honeſtly deſcended, and as honeſtly imploy'd, during the poſſeſſours life, and ſo to deſcend again in that right way of inheritance which God hath commanded, and all good Laws eſtabliſh'd: and it cannot be doubted, but that the bleſſing of God will accompany ſo good endeavours; for it is promiſed; *Pſal.* 1. 24. 91. 101. 127, *&c.* that *the juſt ſhall be as an everlaſting foundation, and ſhall not be removed: That he ſhall ſpring as a green leaf, and his houſe be permanent: whereas after a while, the ſinner ſhall not be, and thou maiſt look his place, but thou ſhalt not find it.*

The free power of Parents.

FAthers are ſo far from being ſuch ſuch abſolute Lords and maſters of their eſtates and children (as the Apologer pretends) that they are not ſo much as quarter maſters of themſelves: for, ſayes an Apoſtle, Rom. 14. *No man is born to himſelf*: and the very Heathens ſay. *Cic. de offic. Partem patria, partem parentes*: our Parents and our countrey, which is alſo our Parent, do claim a great part of us; and can we think there is nothing due to our children? are we commanded, Matth. 2. and 5. Luke 6. 1. Pet. 2. *To love our neighbours as our ſelves, nay even to love our enemies, and to do good to them that hate and hurt us*; and hath a father ſuch free and abſolute power over his eſtate and children, that he may lawfully disinherit his children, and give his eſtate to ſtrangers, or to whom he will, and if a father be ſo far from being maſter of himſelf,

ſelf, that his countrey, Parents, kinred, friends, neighbours; nay, every man who is a member with him of the ſame Commonwealth, hath ſome right unto him, or a part in him, how can any man be ſo ſhameleſs to ſay, or ſo fooliſh to think, that a father, or any man whoſoever, can be an abſolute maſter of his eſtate, when he is not ſo much as quarter maſter of himſelf.

And concerning that abſolute and monſtrous power of Parents, in diſpoſing of the eſtate at their pleaſure: The Apologer ſayes, that many ages were numbred from the worlds beginning, before any man laid any proper claim to any thing, as due to himſelf alone; and he ſayes alſo, that with God there is no exception of perſons, and that God gave the whole earth to the ſons of men: *terram autem dedit filiis hominum:* that is, not to any one in particular, but to all in general; by which reaſons and grounds, there is not any man can abſolutely ſay, this is mine, or that is mine, by the Laws of God and Nature.

But have men therefore no right at all to their lands and goods? Yes (doubtleſs) but

but it is a conditional, not an abſolute right: for ſayes the Apologer, a Family is a civil ſociety; yea the only Commonwealth, which God and Nature firſt ordained, from which, all Societies, Republiques, and Species of Regiment, took their Original: and it is true, for there can be no doubt, but that the firſt Commonwealths, were at the firſt but ſo many great Families; and that all Commonwealths ſprung firſt from Families: and when there was a Commonwealth eſtabliſh'd (or rather begun) and a proportion of lands allotted to every one in particular, they then bound themſelves by Laws, which Laws they enacted by an unanimous conſent amongſt themſelves, for the quiet enjoying, and well ordering of ſuch their particular eſtates; for their peaceable and amicable living one with another: for puniſhment of tranſgreſſors, or repelling unjuſt violence amongſt themſelves, and for their general defence againſt forraign invaſion, or for what elſe ſoever, that ſhall make moſt for the general good; alwayes including an inviolable right and power in the Republique, or General ſtate, according to neceſſity of times and occaſi-

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ons to alter ſome of the ſaid Laws; as alſo, to diſpoſe and command (as they found cauſe) every mans perſon, and every mans particular eſtate: And this the Apologer acknowledges (though it be againſt his free power) ſaying, the world of men is grown to that greatneſſe, that it is neceſſary one general father, or politick head, ſhould be in a kingdom or ſtate, which may juſtly abate a fathers free power; all fathers being children to the father of their countrey, their Lord and King, under God.

And the Apologer knows that fathers are ſo far from being ſuch abſolute Lords, and maſters of their eſtates, that if a father, or any man elſe, do wilfully fling away ſome of his money, or other his goods, into the Sea, or into any place where it cannot be had again, he ſhall be begg'd for an Ideot, and have his eſtate taken from him: and he gives this reaſon, and as good a reaſon as can be given; *intereſt Reipublicæ*--- it belongs to the Commonwealth, that men ſo diſpoſe of their eſtates, as ſhall make moſt for the good of the Commonwealth.

And can there be a worſe prodigal then

a prodigal father? for he falsifies the trust which the Commonwealth (our general Parent) doth repose in him, by wasting those his lands and goods, wherewith he should relieve and provide for his children; which was the greatest, if not the only cause, for which lands were at first given, and are now permitted to be enjoy'd: for only upon children dependeth the whole frame and propagation of mankind; and upon the care and love of Parents in the good instructing of their children, and in the relieving and providing for their children, dependeth the civil order and Society of mankind.

And children have a native, and (as we may well call it) a divine right to their fathers lands and goods in his life time: for, sayes the Apologer, the prodigal son being weary of his fathers house, came to his father, and boldly said; *Pater da mihi portionem*, Give me that portion of goods which belongs to me: and the words following are, *& pater divisit*, and the father gave him his portion; and he sayes also, that fathers are bound by the Civil Law, to leave every one of their children, a legitimate,

mate or childs part; and if they be bound, how can they be ſaid to be free? But ſhould I here recount the many and great obligations wherewith we are bound, in our Chriſtian duty, or charity, towards our neighbours or Chriſtian brother: *Qui habet duas tunicas det non habenti, & qui habet eſcas ſimiliter faciat*, Luke 6. He that hath two coats, let him give one of them to him that hath none, and he that hath meat to ſpare, let him do the ſame: And eſpecially the infinite obligations wherewith we are bound to our children: for ſayes an Apoſtle, 1 *Tim.* 5. *Whoſoever provides not for his family* (then much more he that provides not for his children) *doth deny the faith, and is worſe then an Infidel.* Theſe things well conſidered, it will eaſily appear to any pious underſtanding, that the private, or ſelf-intereſt, which any man hath in his eſtate, is ſo ſmall a thing, that it may be compared unto an attome in the Sun: for indeed, we have no eſtates at all which we can properly call our own; that which we call an eſtate, we hold it but at the courteſie and permiſſion of others, and ſhould imploy it to the benefit of others; and we

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are at the moſt but ſtewards of it for a while, and (like ſtewards) muſt account unto a farthing, *Matth.* 5.

And concerning the large Soveraignty of Parents over their children, there is no queſtion but that fathers are as far from being abſolute Lords and maſters of their children, as they are from being abſolute Lords and maſters of their eſtates, of which I will only give two reaſons.

The firſt reaſon is, that children are the tender plants of the Commonwealth; and that Parents are intruſted, by the Commonwealth, with the good education of their children; which is a thing of that high and neceſſary conſequence, that it is in effect the cyment, or bond, which ties and holds together the whole frame and body of mankind. The conſideration whereof, moved the wiſe *Lacedemonians* to make this brave and pious anſwer to *Antipater*, who demanded many of their children in hoſtage: for they ſaid (as *Plutarch* relates it) that they would firſt chuſe to die, before they would yield him their children, fearing their children would be corrupted, and ſpoiled in their education: nay, they had

had Laws to punish such Parents, whose children were ill condition'd or wicked, supposing it proceeded for want of good care in their education; and they had cause: for (saves the wise *Charron*) there cannot come so much evil to a Commonwealth, by the ingratitude of children towards their Parents, as by the carelesnesse of Parents in the instruction of their children: So, that upon the matter, children are but the Pupils of the Commonwealth, and Parents their Tutours: and this the Apologer acknowledges, though it be as much against his pretended free power as can be, saying, that all fathers are children to the father of their countrey: and that a father is not only bound to nourish his children in his life, but by Natures Law, must provide to his power, that they live in his life, and after his death, to the honour of God, the service of their Countrey, and comfort of their family; which were the only ends for which God created man a civil, or rational creature.

But there is another reason, and that transcends this as far as heaven doth earth, for our children are not only our children, but

but the children also and creatures of God, adorned by him, with the same faculties of Soul and Body as their Parents are, and so become both our brothers and children; for we have all one father, which is in heaven, *Matth. 6. Luke* 11.

Certainly, there cannot any thing be more consolable unto a truly religious heart then seriously to contemplate the infinite goodnesse of God; as also to consider, in what a sweet manner it hath pleased even God himself, to treat with his dear creature, Man. *All his wayes* (saith the royal Psalmist, Psal. 24.) *are mercy and truth*; and saith the Divine Majesty himself, Deut. 8. *I will be a father unto you, and you shall be my sons and daughters*: and how often are we called children, throughout the whole current of the Divine Word; nay, we are called, 1 Cor. 6. *the temples of the holy Ghost*, that is, the Pallace, or Court-Royal of God himself, for such indeed is every pious soul; and can it be supposed, that God, who only giveth children, and calleth them his children, and the temples of his holy Spirit, would give any other power to Parents over their children, but as governours under him, to instruct: and,

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if need be, gently to correct them; for we had no ſooner a Law from the Omnipotent hand; but Parents were commanded Deut. 6. 2. to teach that Law diligently to their children, and ſo diligently; that they were to ſpeak of it as they ſat in their houſe, as they walked by the way, when they lay down, and when they roſe up, that is, at all times, and upon all occaſions; and if they are any way negligent herein, or in the due relieving or providing for their children, an Apoſtle tells them, 1. Tim. 5. *That they have denied the faith, and are worſe then Infidels.* So that if we either conſider the great duties which we ow unto our general father the Commonwealth, unto whom we are but Feoffees in truſt of our eſtates and children; or chiefly thoſe infinite duties which we ow unto our heavenly father; we ſhall find our ſelves ſo much inferiour to the Apologers pretended free power, that no man of any common underſtanding (unleſs he will accuſe himſelf for an Atheiſt, or moſt groſſe Ideot) can think himſelf an abſolute Lord, or maſter, either of himſelf his eſtate or children.

The Rights of eldeſt Sons.

THe Apologer hath done what he can to prove that eldeſt ſons have no more right to inherit then other ſons; all is as pleaſes the father; for he is the ſupream and abſolute Lord of the eſtate, and may lawfully and religiouſly diſpoſe thereof at his pleaſure.

He tells us, that he never read any Authour of this Subject: and why then ſhould he ſo much preſume of his ſelf-ſufficiency, and extraordinary ſpirit, that he ſhould think he may deſerve credit, himſelf telling us, that he is the *ſingularis homo*, the only man who firſt diſputed hereof, or ever brought the matter in queſtion. Marry, I'll tell you, but then you muſt take his own words for it: he ſayes, that he believes he hath ſpoken according to dialectical reaſon; and that there hath been nothing ſpoken of it heretofore truly, which reaſon hath not dictated to all Authours pens;

and you ſhall now ſee what a meſſe of reaſon he doth ſerve in for his purpoſe.

He ſayes in his Epiſtle, that there is a natural reverence due unto the eldeſt ſons, from their younger brothers: he ſayes, that it was the uſe of the Iſraelites to prefer their eldeſt ſons to the better part of their poſſeſſions; and that it is now the more general practiſe of Chriſtian Parents, to leave either all, or the moſt part of their lands to their eldeſt ſons: and he honeſtly gives theſe two reaſons, why it ſhould ſo be.

The firſt is, becauſe there is a natural reverence due unto the elder brothers.

The ſecond is, becauſe this cuſtome had its original from the imitation of Princes, and for the preſervation of Families, and that an equal diviſion of the lands and goods amongſt all the children; will bring an eſtate to nothing, or to ſo little, that it may be compared unto an attome in the Sun.

He ſayes, that at firſt, fathers and their firſt born after them, were as Kings and Prieſts in their own houſes.

He

He ſayes, that our Common Laws give the right of inheritance to eldeſt ſons.

He cites a Divine Precept, *Deut.* 21. which plainly proves the rights of eldeſt ſons.

He ſayes that we find in holy Writ, great reſpect was had of the firſt begotten, and a bleſſing was held to come to Parents thereby.

You may ſee here, how ſufficiently the Apologer hath argued on the behalf of his younger brothers; for I know not what he can ſay more, that can more advance the rights of eldeſt ſons.

But, leaving the Apologer, I will a little more dilate my ſelf (not ſo much in proof) as in illuſtration of the premiſes.

The very vegetables, and unreaſonable creatures, are no mean arguments of the excellency of Primogeniture: How grateful to the Planter, and indeed, how much more vigorous and excellent are the firſt fruits of plants, more then other productions: and how fully do the firſt fruits of a new broken up ground, content and ſatisfie the longing hopes of the honeſt hus-

bandman; and after ſome few crops, how poorly doth the ſame earth diſcharge it ſelf of its burthens; and this was the reaſon why the firſt fruites, were in the old Law, reſerved for the moſt ſacred uſes; and ſo it was meet; for God, who is the giver of all good things, ſhould be ſerved with the beſt of thoſe things which himſelf hath given.

The very beaſts and birds do no leſſe declare the excellency of Primogeniture: for it is generally obſerved, that the Parent birds do uſe to feed their young ones, as their young ones are in ſeniority; yielding, as it were, a kind of right, or a natural and lawful precedence unto the eldeſt; and the very neſt gull, or the youngeſt of the young feathered creatures, doth plainly demonſtrate, how much more perfect and excellent the ſenior birds are above their younger.

Salvianus, lib. 4. de gubern. Dei, Ariſtotle, and divers others, do make excellent Diſcourſes concerning the ſeeming prudence and piety of the Storks and Bees; and ſhall the Bees yield to order, and have a Commonwealth amongſt them; and

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ſhall the reaſonable creature called Man, be more unreaſonable then they, and have no rule or order of inheritance in their own Families, but at the fathers affection and will.

They alſo deliver, that the young of all creatures do obſerve a kind of reverence, and obedience to their elder young: and that the eldeſt young doth uſe to ſuck at the uppermoſt teat, and the younger young will not ſo much as preſume to uſurp upon the rights of the eldeſt, nor their Parents ſuffer it.

Theſe things (if rightly weighed) are of no mean conſideration, concerning the excellency of Primogeniture, and conſequently of the rights and prerogatives of eldeſt ſons; and the ſaying of *Job*, chap. 12. is no inſufficient anſwer to any one, who would diſparage the rights of eldeſt ſons: *Interrogato jumenta*; ask the beaſts and they will teach you.

But that which is moſt conſiderable (next to the Divine Precepts) is the ſacred eſteem of Primogeniture, amongſt the elected people of God: for with them, as appears, *Exod.* 13. and 34. *Numb.* 3 8. &c.

the firſt born of the very beaſts were exempted from work; and fathers, and their firſt born after them, were as Kings, and Prieſts in their own houſes.

And it hath pleaſed the Divine Majeſty (to the infinite glory of Primogeniture) to ſanctifie unto himſelf all the firſt born of the male-kind, calling them his: and to call his Church triumphant. the Church of the firſt born, *Hebr.* 12. Nay even to call his Divine ſelf (who hath been from all eternity, unbegotten) his firſt begotten ſon, *Coloſſ.* 3.

But theſe are no precepts, that fathers ſhould endow their eldeſt ſons with the greateſt part of the eſtate. It is true, yet are they good motives, & great inſtructions, and may be taken for no leſſe then precepts in any pious underſtanding: for we are to elect and love, whom God electeth and loveth; and ſince it hath pleaſed God to elect and prefer our eldeſt ſons, in a higher degree of excellency then any other our children; we are therefore to elect and prefer our eldeſt ſons in a higher degree of inheritance then any other our children.

And

And can it be suppos'd, that God would leave us in suspence, concerning so high a point as is inheritance; which is indeed the main ground and foundation of all humane Laws: and therefore it hath pleased the Divine Majesty, to impose this his great command upon his elected people; which was, that if any one of them died without a son, his inheritance should go to his daughters; and if he had no daughters, to his brethren: and if he had no brethren, to his fathers brethren, *&c.* and that this should be a perpetual Law, as the Lord commanded *Moses*, Numb. 27. By which it is evident, that one son in particular, and not sons in general, ought to be heir, and be endowed with the prime Blessing, or Patrimony: unto which accordeth an Apostle, saying, *Gal.* 4. as long as the heir is a little one, he differeth nothing from a servant, though he be Lord of all, and the Apostle meant only the first begotten, or eldest son living: for he calleth *Esau* a prophane person, because for a dish of meat he sold his first birth-rights; and in his dreadful denouncement against unnatural and neglectful Parents, 1 *Tim.* 5. which is,

that they are worſe then Infidels. He ſayes in the ſame chapter, *Seniorem ne increpaveris* -- Do not diſreſpect thy elder, *&c.* giving a fine, and full inſtruction thereby, who it is that ſhould be the right heir, or chief Lord and maſter of the Family.

But here it may be ſome will object, that this Law was only ſpoken to the Jews, and therefore did only concern the Jews: they may as well ſay, that the holy Tables of the Law, did only concern the Jews; for they alſo were deliver'd to the Jews: and ſurely I cannot conceive what can be more moral and neceſſary, then that there ſhould be a chief ſon, or heir, amongſt our children, and generally known, by a native and undoubted right: for there muſt neceſſarily be an order and ſubordination in all things; and what can be more natural and juſt, then that Parents ſhould be bound to relieve and provide for their children: And had this Law only concerned the Jews, would S. *Paul* have commended Seniority, and condemned *Eſau* for ſelling his birthright: and would the ancient Fathers (who are the beſt of humane teſtimony)

mony) as S. *Chryſoſtome*, in his fift Sermon againſt *Julian*; and S. *Jerom*, in his Epiſtle to *Onogron*, and upon the 49. *Gen.* (with divers others) would they have averred, that the firſt born, or eldeſt ſons, are more honourable then other children; and that the right of inheritance, is only due to the firſt begotten, or eldeſt ſon living: and had this Law only bound the Jews, would it have been denounced from the immediate mouth of God himſelf; and delivered in theſe words, *a perpetual Law, as the Lord commanded Moſes.*

But there is a plainer Precept, *Deut.* 21, and theſe are the divine words,

If a man have two wives, one beloved and the other hated, and they have both children by him. If the firſt ſon be hers that was hated, he may not make the ſon of the beloved the firſt born, and prefer him before the ſon of the hated; but he ſhall acknowledge the ſon of the hated for the firſt born, by giving him a double portion of all that he hath: for he is the beginning of his ſtrength, the right of the firſt born is his.

Now though the litteral expreſſion be, that

that eldeſt ſons are to have a double part of the eſtate, and the other part to be divided amongſt the children equally, as well ſons as daughters, we are to conſider that the ſon here mentioned, is an unbeloved ſon; or the ſon of a wife not beloved, which doth utterly exclude the affection and free will of Parents, in diſpoſing of the eſtate at their pleaſure: and it is not here ſaid, nor any where elſe, through the Divine Writ, that we are to give but a double part or portion to our eldeſt ſons, for the practiſe of the Iſraelites was much otherwiſe: the fathers, and their eldeſt ſons after them, being as Kings and Prieſts in their own houſes: Neither are we to believe, that we may lawfully and religiouſly ſo do: for ſo, we ſhall condemn the juſtice of the Cannon and Civil Laws, and our Common Laws, and all other good Laws, which (as I have already ſhowed) do all concur with the Divine Laws, to erect an impregnable right of inheritance in eldeſt ſons. And we ſhall condemn the general practiſe of all good Parents, who uſually leave the greateſt part of their eſtates to their eldeſt ſons: which general

neral consent and custome, can proceed from no other cause or ground, then from the instinct of nature; and consequently, from the Will, Providence, and Ordinance of God himself; but that which is most observable and considerable is, that God giveth no long blessing to any other course of inheritance. Whence we may collect, how odious a crime, and how great an injury it is to disinherit a rightful heir; and it is no lesse: for he that would displace the right heir from the due of his birthright, and such a right, as is enacted by God himself; establish'd by all good Laws, and generally practis'd by all good Parents: he is no pidler, for he strikes at the root, and doth what he can to overthrow all Laws, and order, and bring into the world a Chaos of confusion. Mistake me not, I do not conceive, nor dare not say, that the rights of eldest sons, are so absolute, as that they will brook no exception: for the great Law or Precept, *Matth.* Upon which all the rest have their main dependance, which is. to love and honour God above all things, doth abrogate and disanul (as we piously believe) all the other Precepts, which do not con-

concur with the love and honour of God. And whereas we are commanded to honour our Parents, and the words are abſolute; yet if Parents ſhould be Idolators, or Blaſphemers, or Atheiſts, or Infidels, or (which as bad as any of theſe) unnatural: I cannot conceive, but that children are freely diſcharged, from their obligation of honouring ſuch Parents: for how can we love and honour God, if we love and honour Gods greateſt enemies. So on the contrary ſide, if eldeſt ſons be Atheiſts, or Infidels, or extreamly and deſperately vicious; there is no queſtion, but that their fathers may lawfully and religiouſly diſinherit them; for they are ſo unworthy to inherit, that they are not worthy to live.

To conclude (good Reader) if what I have here delivered, may redound to thy benefit, and better inſtruction (for which it was intended) I ſhall rejoyce in my labours, I will give God the praiſe.

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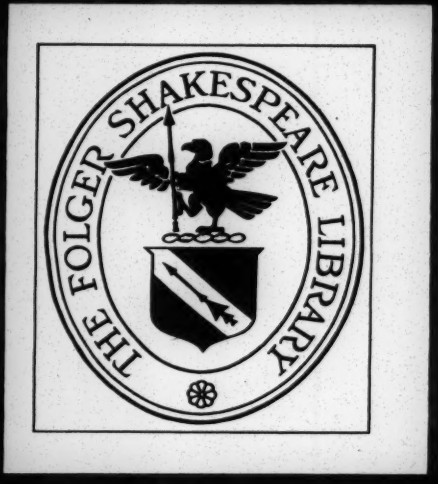
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